

# **EXHIBIT 2**

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CITY OF MODESTO REDEVELOPMENT AGENCY;  
and THE PEOPLE OF THE STATE OF  
CALIFORNIA EX REL THE CITY ATTORNEY  
OF THE CITY OF MODESTO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN FRANCISCO**

CITY OF MODESTO )  
REDEVELOPMENT AGENCY; and THE )  
PEOPLE OF THE STATE OF )  
CALIFORNIA EX REL THE CITY )  
ATTORNEY OF THE CITY OF )  
MODESTO, )

Plaintiffs, )

v. )

THE DOW CHEMICAL COMPANY; PPG )  
INDUSTRIES, INC.; VULCAN )  
MATERIALS COMPANY; E.I. DUPONT )  
DE NEMOURS AND COMPANY; R.R. )  
STREET & CO., INC.; M.B.L., INC.; )  
WASHEX MACHINERY OF )  
CALIFORNIA, INC.; ACME CLEANERS; )  
MODESTO STEAM LAUNDRY & )  
CLEANERS, INC.; SAV-ON )  
MACHINERY COMPANY, INC.; )  
OCCIDENTAL CHEMICAL )  
CORPORATION [DOE 1]; STAUFFER )  
CHEMICAL COMPANY [DOE 2]; )  
FULLER SUPPLY COMPANY )  
[DOE 251]; GOSS JEWETT CO. OF )  
NORTHERN CALIFORNIA; [DOE 252]; )  
WORKROOM SUPPLY INC. [DOE 253]; )

Case No. 999345

**FOURTH AMENDED COMPLAINT  
FOR TOXIC TORT DAMAGES AND  
OTHER RELIEF RE: (1) STRICT  
LIABILITY; (2) NEGLIGENCE;  
(3) NEGLIGENCE *PER SE*;  
(4) CONTINUING TRESPASS;  
(5) PRIVATE NUISANCE;  
(6) PRIVATE NUISANCE *PER SE*;  
(7) PUBLIC NUISANCE;  
(8) PUBLIC NUISANCE *PER SE*;  
(9) RESPONSE COSTS UNDER  
CALIFORNIA SUPERFUND ACT;  
(10) DECLARATORY RELIEF UNDER  
CALIFORNIA SUPERFUND ACT;  
(11) ULTRAHAZARDOUS ACTIVITY;  
AND  
(12) COST RECOVERY UNDER  
POLANCO REDEVELOPMENT ACT**

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1 ECHCO SALES CO. [DOE 254]; )  
 2 WAMAX CORPORATION, AKA )  
 3 WASHEX MACHINERY )  
 4 CORPORATION [DOE 501]; WHITE )  
 5 CONSOLIDATED INDUSTRIES, INC. )  
 6 [DOE 502]; HOYT CORPORATION )  
 7 [DOE 503]; MARVEL )  
 8 MANUFACTURING [DOE 504]; )  
 9 AMERICAN LAUNDRY MACHINE, )  
 10 FORMERLY A DIVISION OF MCGRAW )  
 11 EDISON CO. [DOE 505]; AMERICAN )  
 12 LAUNDRY MACHINERY, INC. D/B/A )  
 13 AJAX MANUFACTURING DIVISION & )  
 MARTIN EQUIPMENT [DOE 506]; )  
 BOEWE PASSAT, N/K/A BOWE )  
 PERMAC, INC. [DOE 507]; VIC )  
 MANUFACTURING COMPANY )  
 [DOE 508]; LCI MACHINE [DOE 509]; )  
 MCGRAW EDISON COMPANY, )  
 INDIVIDUALLY AND DBA AMERICAN )  
 LAUNDRY MACHINERY [DOE 510]; )  
 and DOES 3 through 1,000, inclusive, )  
 Defendants. )

14 Plaintiffs allege that at all relevant times:

# 15 I. THE PARTIES

## 16 A. The Plaintiff

17 1. Plaintiff City of Modesto Redevelopment Agency ("Modesto RDA" or  
 18 "plaintiff") is an "agency" within the meaning of California Health and Safety Code  
 19 section 33003, with the power to sue under Health and Safety Code section 33125(a), and  
 20 charged with the statutory power to alter, improve, reconstruct, rehabilitate, modernize, and  
 21 clean up property in the blighted Modesto Redevelopment Project Area ("project area") in the  
 22 interests of the health, safety, and general welfare of the people. In addition, plaintiff owns  
 23 real property in the project area, including the land under the convention center located at  
 24 1000 "L" Street and the parking garage located on Ninth Street between "K" and "L" Streets in  
 25 Modesto, California. Generally, plaintiff alleges and contends that each of the named and  
 26 DOE defendants is legally responsible for the costs and damages relating to the presence and  
 27 abatement of toxic chlorinated solvents located in or about the project area which blight the  
 28

1 project area, adversely impact the use of the project area, depreciate or stagnate property values  
2 and adversely affect the interests of the health, safety, and welfare of the people.

3 2. In October 1997, plaintiff conducted an environmental investigation and testing  
4 of the project area to determine whether any portion of the redevelopment area was  
5 contaminated. As a result of the 1997 investigation, plaintiff discovered that the volatile  
6 organic chemicals perchloroethylene and trichloroethylene have contaminated portions of the  
7 project area.

8 3. Plaintiff The People of The State of California Ex Rel The City Attorney of The  
9 City of Modesto is the Modesto City Attorney's office acting in the name of The People of the  
10 State of California ("The People"). Plaintiff The People is asserting claims only in the seventh  
11 and eighth causes of action herein, and not in the remaining causes of action stated in this  
12 Complaint.

13 **B. The Chlorinated Solvent Manufacturer Defendants**

14 4. Defendant The Dow Chemical Company ("Dow") is a Delaware corporation  
15 with its principal place of business located in Midland, Michigan.

16 5. Defendant E.I. Dupont De Nemours And Company ("Dupont") is a corporation  
17 with its principal place of business in Wilmington, Delaware.

18 6. Defendant PPG Industries, Inc. ("PPG") is a Pennsylvania corporation with its  
19 principal place of business in Pittsburgh, Pennsylvania.

20 7. Defendant Vulcan Materials Company ("Vulcan") is a New Jersey corporation  
21 with its principal place of business in Homewood, Alabama.

22 8. Plaintiffs are ignorant of the true names and/or capacities of the defendants sued  
23 under the fictitious names of DOES 1 through 250, inclusive. Since plaintiff filed the original  
24 complaint herein, the following DOE chlorinated solvent manufacturer defendant(s) have been  
25 identified and substituted in this action: Occidental Chemical Corporation [DOE 1]; and  
26 Stauffer Chemical Company [DOE 2].

27 9. Defendants Dow, Dupont, PPG, Vulcan, and DOES 1 through 125, and each of  
28 them: (1) manufactured, distributed, transported, packaged, sold and/or disposed of toxic

1 chlorinated solvents called perchlorethylene ("PERC") and/or trichloroethylene ("TCE").  
2 PERC and TCE, and their degradation products and ingredients, are referred to collectively as  
3 "chlorinated solvents" in the State of California and/or were involved in the manufacture of  
4 equipment sold in the State of California specifically designed to store, use, process, and  
5 dispose of chlorinated solvents; (2) DOES 126 through 250, and each of them, manufactured,  
6 distributed, transported, packaged, sold and/or disposed of TCE in the State of California;  
7 (3) defendants Dow, Dupont, Occidental, PPG, Vulcan, and DOES 1 through 250, and each of  
8 them, were legally responsible for and committed each of the tortious and wrongful acts  
9 alleged in this complaint; and (4) in doing the tortious and wrongful acts alleged in the  
10 complaint, acted in the capacity of co-conspirator, aider, abettor, joint venturer, partner, agent,  
11 alter ego, principal, successor-in-interest, surviving corporation, fraudulent transferee,  
12 fraudulent transferor, controller, alter ego, licensee, licensor, patent holder and/or indemnitor  
13 of each of the remaining DOE and named defendants.

14 10. Each of the defendants named in paragraphs 3 through 9 above, and DOE  
15 defendants 1 through 250, will be collectively referred to as the "manufacturer defendants" or  
16 "manufacturers."

17 **C. Distributor Defendants**

18 11. Defendant M.B.L., Inc. ("MBL") is a California corporation with its principal  
19 place of business in Santa Clara, California.

20 12. Defendant R.R. Street & Co. ("Street") is a corporation with its principal  
21 place of business in Naperville, Illinois.

22 13. Plaintiffs are ignorant of the true names and/or capacities of the defendants sued  
23 herein under the fictitious names of DOES 251 through 500, inclusive. Since plaintiff filed the  
24 original complaint herein, the following DOE distributor defendants have been identified and  
25 substituted in this action: Fuller Supply Company [DOE 251]; Goss Jewett Co. of Northern  
26 California [DOE 252]; Workroom Supply, Inc. [DOE 253]; and Echco Sales Co. [DOE 254].

27 14. MBL, Street, and DOES 251 through 500 ("distributor defendants"), and each  
28 of them: (1) purchased chlorinated solvents from one or more of the manufacturer defendants,

1 and then resold the chlorinated solvents in the State of California to Modesto dry cleaners,  
2 including one or more of the retailer defendants; (2) distributed, designed, assembled,  
3 maintained, controlled, operated and/or repaired equipment parts, replacement parts, and  
4 appurtenances, including, but not limited to, dry cleaning equipment in the State of California  
5 specifically designed for the use, application, and disposal of chlorinated solvents by Modesto  
6 dry cleaners, including the retailer defendants; (3) would engage in service visits and  
7 inspections on the premises of Modesto dry cleaners, including the dry cleaning defendants for  
8 the purposes of promoting their dry cleaning solvents and dry cleaning equipment products and  
9 testing and inspecting Modesto dry cleaner equipment which included witnessing dry cleaner's  
10 disposal of chlorinated solvents; (4) were legally responsible for and committed each of the  
11 tortious and wrongful acts alleged in this Complaint; and (5) in doing the tortious and  
12 wrongful acts alleged in the Complaint, acted in the capacity of co-conspirator, aider, abettor,  
13 joint venturer, partner, agent, principal, successor-in-interest, surviving corporation, fraudulent  
14 transferee, fraudulent transferor, controller, alter ego, licensee, licensor, patent holder and/or  
15 indemnitor of each of the remaining DOE and named defendants.

16 15. In addition to engaging in the distributor activities more fully described in  
17 paragraph 13 above, DOES 400 through 500 also engaged in the manufacturing acts and  
18 activities fully described in paragraph 8 above, which is incorporated in full herein.

19 **D. Chlorinated Solvent Equipment Manufacturers**

20 16. Defendant Sav-On Machinery Company, Inc. ("Sav-On") has sold chlorinated  
21 solvent equipment for the past twenty (20) years to dry cleaners in Northern California. At all  
22 relevant times, the principal place of business of Sav-On is San Francisco, California.  
23 Defendant Sav-On has been dismissed from this action without prejudice.

24 17. Defendant Washex Machinery of California, Inc. ("Washex") is a corporation  
25 with its principal place of business in Burbank, California.

26 18. Plaintiffs are ignorant of the true names and/or capacities of the defendants sued  
27 herein under the fictitious names of DOES 501 through 750, inclusive ("chlorinated solvent  
28 equipment manufacturers"). Since plaintiff filed the original complaint herein, the following

DOE chlorinated solvent equipment manufacturers have been identified and substituted in this action: Wamax Corporation, aka Washex Machinery Corporation [DOE 501]; White Consolidated Industries, Inc. [DOE 502]; Hoyt Corporation [DOE 503]; Marvel Manufacturing [DOE 504]; American Laundry Machine, Formerly a Division of McGraw Edison Co. [DOE 505]; American Laundry Machinery, Inc. d/b/a Ajax Manufacturing Division & Martin Equipment [DOE 506]; Boewe Passat, n/k/a Bowe Permac, Inc. [DOE 507]; Vic Manufacturing Company [DOE 508]; LCI Machine [DOE 509]; and McGraw Edison Company, individually and dba American Laundry Machinery [DOE 512].

19. Defendants Sav-On, Washex, and DOES 501 through 750, and each of them: (1) manufactured, distributed, designed, assembled, maintained, supervised, controlled, sold, operated and/or repaired equipment, parts, and appurtenances, including, but not limited to, dry cleaning equipment, in the State of California specifically designed for the storage, application, and disposal of chlorinated solvents by the retailer defendants ("chlorinated solvent equipment"); (2) were legally responsible for and committed each of the tortious and wrongful acts alleged in this Complaint; and (3) in doing the tortious and wrongful acts alleged in the Complaint, acted in the capacity of co-conspirator, aider, abettor, joint venturer, partner, agent, principal, successor-in-interest, surviving corporation, fraudulent transferee, fraudulent transferor, controller, alter ego, licensee, licensor, patent holder and/or indemnitor of each of the remaining DOE and named defendants.

20. In addition to the chlorinated solvent equipment activities alleged in paragraph 18 above, DOE defendants 650 through 750 also engaged in the chlorinated solvent manufacturing acts and activities alleged in paragraph 9, which is incorporated herein by reference.

**E. The Retailer Defendants**

21. Defendant Acme Cleaners is a business organization (form unknown) with its principal place of business located in the City of Modesto, California.

22. Defendant Modesto Steam Laundry & Cleaners, Inc., is a business organization (form unknown) with its principal place of business located in the City of Modesto, California.



23. Plaintiffs are ignorant of the true names and/or capacities of the defendants sued herein under the fictitious names of DOES 751 through 1,000, inclusive. Plaintiffs' investigations and testing of the soils and groundwater at and in the vicinity of the project area are continuing.

24. The defendants named in paragraphs 20 through 22 above, and DOES 751 through 1,000, and each of them: (1) owned and/or operated in the redevelopment area retail dry cleaners, laundry facilities, real property and/or some other business or personal capacity involving the use of chlorinated solvents which have been released upon or into, or otherwise threaten to be released upon or into the project area; (2) were legally responsible for and committed each of the tortious and wrongful acts alleged in this complaint; and (3) in doing the tortious and wrongful acts alleged in the complaint, acted in the capacity of co-conspirator, aider, abettor, joint venturer, agent, principal, successor-in-interest, surviving corporation, fraudulent transferee, fraudulent transferor, controller, alter ego, licensee, licensor, patent holder and/or indemnitor of each of the remaining DOE and named defendants.

25. Each of the defendants named in paragraphs 20 through 22, and DOE defendants 751 through 1,000, are collectively referred to as the "retailer defendants."

#### **I. BACKGROUND OF CHLORINATED SOLVENTS**

26. Perchloroethylene ("PERC") and trichloroethylene ("TCE") are toxic organic compounds. PERC and TCE have been used as cleaning solvents. Dry cleaning machines were designed and developed to use PERC and TCE. PERC was the most widely used dry cleaning chemical in the United States. PERC is also referred to as PCE, carbon dichloride, and 1,1,2,2-tetrachloroethylene. In soil, PERC can be transformed by biological degradation and by reductive dehalogenation into TCE, vinyl chloride, and trichloroethane ("TCA").

27. In or about the 1940s, the defendants knew, or should have known, that PERC could be absorbed in the lungs, skin, and gastrointestinal tract which could cause severe damage to the liver, kidneys, central nervous system and other toxic effects. PERC is a known carcinogen which causes genetic damage. The defendants also knew, or should have known,



1 that PERC and its degradation products and ingredients create a substantial risk of harm to  
2 groundwater and soil.

3 28. Similarly, TCE, including its degradation products and ingredients, is a known  
4 carcinogen which can cause cancer, liver and kidney damage and death. Since the early 1900s,  
5 among other things, TCE was marketed as a chemical to extract soybean meal for use as cattle  
6 feed. This use of TCE was discontinued in the 1950s after numerous reports of widespread  
7 hemorrhagic cattle disease and deaths directly linked to the ingestion of TCE.

8 29. Commencing in or about the 1940s, there were published reports of  
9 groundwater contamination caused by TCE which rendered water unfit for drinking.  
10 Defendants knew, or should have known, that TCE and its degradation products and  
11 ingredients create a substantial risk of harm to the environment, groundwater, and soil.

12 30. Notwithstanding their knowledge of health and environmental hazards of  
13 chlorinated solvents, the manufacturing defendants, chlorinated solvent equipment defendants,  
14 and distributor defendants designed, manufactured, marketed, and/or supplied chlorinated  
15 solvents and/or chlorinated solvent dry cleaning equipment and/or replacement parts to retail  
16 dry cleaners, including the retailer defendants. The equipment was specifically designed to  
17 store, use, process, and dispose of chlorinated solvents. Defendants were aware of the typical  
18 use, waste, and disposal practices resulting from the intended use of their equipment, including  
19 the customary practice of dumping chlorinated solvent wastewater and muck into the public  
20 sewer systems, and the habitual problem with multiple leaks of chlorinated solvents into the  
21 environment during the foreseeable and expected use of chlorinated solvent equipment.

22 31. Notwithstanding the fact that the manufacturer defendants, the chlorinated  
23 solvent equipment defendants, and distributor defendants knew, or should have known, of the  
24 serious health hazards caused by the use and disposal of chlorinated solvents and that  
25 chlorinated solvents pass through sewer pipes and concrete floors, thereby contaminating soil  
26 and migrating into groundwater, defendants negligently and carelessly: (1) issued instructions  
27 that chlorinated solvents could be discharged into the sewers, permitting chlorinated solvents  
28 to contaminate the sewer system and surrounding property; (2) designed and operated dry

1 cleaning machines, appurtenances, and other types of machinery designed to be used with  
2 chlorinated solvents to facilitate and promote the disposal of chlorinated solvents into the  
3 sewer system and/or which failed to adequately prevent and/or minimize the loss of  
4 chlorinated solvents; (3) failed to recall and/or warn the users of the negligently designed  
5 chlorinated solvent equipment of the dangers of groundwater contamination as a result of  
6 chlorinated solvents disposal in the sewer system; and (4) further failed and refused to issue  
7 the appropriate warnings and/or recalls to the users of chlorinated solvents regarding the  
8 proper means of use and disposal of this toxic chemical, notwithstanding the fact that the  
9 respective defendant knew the identity of the purchaser of the chlorinated solvent equipment  
10 and/or chlorinated solvents.

11 32. In addition, the manufacturer defendants and distributor defendants, and each of  
12 them: (a) knew, or should have known, that dry cleaners, including the retailer defendants and  
13 other Modesto dry cleaners which contributed to the chlorinated solvent contamination, were  
14 foreseeable users of chlorinated solvents and were using the chlorinated solvents in a  
15 foreseeable manner; (b) knew, or should have known, that the chlorinated solvents were  
16 dangerous to the environment or health if deposited directly on the ground, drained or flushed  
17 into the sewer system, or by permeating unprotected concrete floors under dry cleaning  
18 equipment; (c) knew, or should have known, that Modesto dry cleaners, including the retailer  
19 defendants, foreseeably lacked knowledge of these dangers; (d) failed to warn the Modesto dry  
20 cleaners, including the retailer defendants, of the dangers and/or affirmatively instructed them  
21 to engage in such dangerous conduct; and (e) as a result, the Modesto dry cleaners, including  
22 the retailer defendants, failed to guard against the alleged contamination which resulted in  
23 harm to the plaintiffs.

24 33. In addition, notwithstanding the manufacturing defendants' and distributor  
25 defendants' knowledge of the severe environmental and health dangers and hazards posed by  
26 the use and disposal of chlorinated solvents on the ground and in sewers, these defendants: (1)  
27 instructed, directed, and recommended Modesto dry cleaners, including the retailer defendants,  
28 to dispose of chlorinated solvents onto the ground and into the sewers; (2) instructed, directed,

1 and recommended Modesto dry cleaners, including the retailer defendants, to maintain,  
2 operate, design, and construct the dry cleaning equipment to drain chlorinated solvents into the  
3 sewer systems and/or operate and maintain the dry cleaning equipment by means of physically  
4 disposing chlorinated solvent waste as part of the operation of the dry cleaning equipment into  
5 the sewers or soil which caused substantial and serious harm to the property of others,  
6 including the plaintiffs.

7 34. Chlorinated solvent products are fungible. The manufacturer and distributor  
8 defendants concluded that it was not enough to simply sell chlorinated solvents to dry cleaners  
9 in order to remain competitive. In order to compete for larger shares of the chlorinated solvent  
10 market, the manufacturer and distributor defendants, and each of them, would routinely and  
11 frequently advise, instruct, assist, recommend and/or participate in the operation, maintenance,  
12 inspection and/or testing of dry cleaners, including the retailer defendants and other Modesto  
13 dry cleaners, in order to promote the purchase of their chlorinated solvent products and in  
14 order to create brand loyalty. These activities included personal visits by manufacturer and  
15 distributor representatives to Modesto dry cleaners and written directions, instructions, and  
16 brochures on dry cleaning equipment maintenance and operations. Each of the manufacturer  
17 and distributor defendants routinely engaged in these same and similar practices. As part of  
18 these activities and practices, the manufacturer and distributor defendants, and each of them,  
19 instructed, directed and/or recommended to Modesto dry cleaners, including the retailer  
20 defendants, to dispose of chlorinated solvents on the ground or in the drain, including using the  
21 sewer system and dumping solvents on the ground as a method of disposal.

22 35. For example, in a 1966 memorandum on chlorinated solvent marketing, defendant  
23 E.I. DuPont De Nemours and Company stated that "PERK is PERK [sic]." DuPont concluded  
24 that PERC is a fungible product, and that the mere sale of PERC to customers is insufficient to  
25 gain a greater share of the competitive market because its salesmen and distributors would be  
26 perceived as mere "order takers." Therefore, in order to compete with other PERC  
27 manufacturers and distributors, its authorized representatives became personally involved in  
28 the dry cleaning business of its customers through regular and frequent personal calls to the

dry cleaners by providing written materials regarding the promotion, operation, and maintenance of dry cleaning equipment, and by supplying items of “genuine use” to dry cleaners, including “solvent resistant” gloves and bags. Each of the solvent manufacturers and distributors were engaged in these same or similar practices by routinely and frequently sending personal representatives to the premises of Modesto dry cleaners, including the dry cleaner defendants, and, among other things: (1) regularly observing the dry cleaning operations and practices, including disposal methods, of Modesto dry cleaners; (2) issuing brochures, newsletters and written and/or verbal directions and/or instructions for the operation, maintenance, and use of dry cleaning equipment and/or dry cleaning solvents; (3) testing perchloroethylene at the dry cleaners; (4) unloading and storing perchloroethylene at the Modesto dry cleaners; and (5) entering into exclusive distribution agreements between the manufacturer and distributor defendants which required the distributors to act as representatives of the respective manufacturers in doing these alleged acts.

36. Examples of these practices include, but are not limited to, the following:

(a) Dow advised, recommended and/or instructed dry cleaners to operate and maintain their dry cleaning equipment to discharge separator wastewater which contained chlorinated solvent contamination in such a manner to maximize a “free unimpeded water flow to the drain . . .”

(b) Defendant Dow instructed dry cleaners that “small amounts [of chlorinated solvents] may be transported to an area where it can be placed on the ground . . .”

(c) In a 1991 internal Vulcan and R.R. Street memorandum entitled “PERC Removal from Water Saturated With PERC Study,” R.R. Street/Vulcan concludes that significant amounts of PERC remain in wastewater generated by the dry cleaning process which was deposited into sewers.

(d) Defendant R.R. Street instructed dry cleaners that “[t]he residue from distillations of perchloroethylene may be poured on dry sand, earth, or ashes . . .”

(e) Defendant MBL, Inc. agreed to “disseminate to all customers” Dow publications regarding the handling of Dow perchloroethylene.

1 (f) Defendant R.R. Street provided "instructions for building a device for the purpose  
2 of detecting PERC escaping with the water from a water separator entitled "Are You Losing  
3 PERC Down the Drain?"

4 (g) PPG Industries instructed dry cleaners to dispose perchloroethylene "to a sanitary  
5 sewer or bury in chemical landfill."

6 (h) The manufacturer defendants were members of various trade groups including the  
7 Manufacturing Chemists Association, Inc., which prepared written instructions which the  
8 manufacturing defendants and distributor defendants supplied to Modesto dry cleaners which  
9 instruct that "small amounts [of chlorinated solvents] . . . can be placed on the ground."

10 (i) In addition, (a) the manufacturer defendants and distributor defendants of  
11 chlorinated solvents provided direct technical advice and service to the retailer defendants and  
12 Modesto dry cleaners relating to waste disposal in which the manufacturer defendants and  
13 distributor defendants advised the retailer defendants and Modesto dry cleaners to dispose of  
14 chlorinated solvents containing waste and separator water into the sewer or on the ground; (b)  
15 the retailer defendants and Modesto dry cleaners relied upon the advice of the manufacturer  
16 defendants and distributor defendants with regard to the operation of their facility and with  
17 regard to the disposal advice and service; (c) employees and agents of the manufacturer  
18 defendants and distributor defendants of chlorinated solvents had access to the facilities of the  
19 retailer defendants and Modesto dry cleaners; and (d) employees and agents of the  
20 manufacturer defendants and distributor defendants of chlorinated solvents performed tests on  
21 chlorinated solvents containing wastes, and that process resulted in the release of chlorinated  
22 solvents into the sewer and the environment causing the damage alleged herein.

23 (j) The manufacturer defendants set up, staffed, and directly controlled various trade  
24 associations and distributor defendants for the study, distribution, marketing, and sale of  
25 chlorinated solvents . Through these trade associations and the distributor defendants, the  
26 manufacturer defendants exercised complete and direct control over the study, distribution,  
27 marketing and sale of chlorinated solvents, and these trade associations and distributor  
28 defendants acted as agents of the manufacturer defendants in studying, distributing, marketing,

1 and selling of chlorinated solvents. Through these trade associations and distributor  
2 defendants, the manufacturer defendants knew of the toxicity and health and safety hazards  
3 associated with chlorinated solvents and gave instructions and advice regarding the disposal of  
4 chlorinated solvents that caused the release of chlorinated solvents into the environment. The  
5 manufacturer defendants organized and created these trade association and distributor  
6 defendants with the intent of shielding themselves from liability associated with their  
7 knowledge and control over chlorinated solvent products and the associated releases of  
8 chlorinated solvents.

9 37. The manufacturer, distributor, and chlorinated solvent equipment manufacturer  
10 defendants also (1) encouraged dry cleaners to use chlorinated solvents without adequate  
11 warnings, (2) agreed through trade associations to attack any regulation of chlorinated  
12 solvents, and (3) promoted the unsafe and improper disposal of chlorinated solvents in order to  
13 reduce the costs of its use and to increase the market share of chlorinated solvents over other  
14 competing dry cleaning substances.

## 15 **II. CONTAMINATION OF THE PROJECT AREA**

16 38. As a direct result of the defendants' acts alleged in this Complaint, the project  
17 area, including soil, groundwater and improvements, has been contaminated, and will continue  
18 to be contaminated, with chlorinated solvents which creates a public health hazard unless  
19 abated. As a direct and proximate result thereof, plaintiff must initiate a remedial program to  
20 assess, evaluate, investigate, monitor, remove, clean up, correct, and abate chlorinated solvent  
21 contamination in the project area and to restore the project area at significant expense, loss and  
22 damage. Costs incurred within the past three years of the filing of the Complaint, or that are to  
23 be incurred in the future, include: loss of use of property, property damage, restoration costs  
24 incurred within the past three years of the filing of the Complaint or that are to be incurred in  
25 the future, delay damages, property devaluation, interim and permanent remedial measures to  
26 control releases and potential releases of chlorinated solvents, cleanup costs, potential  
27 installation and maintenance of interceptor wells, and water treatment facilities, all in an  
28 amount in the many millions of dollars.



**FIRST CAUSE OF ACTION**

**(Strict Liability by Plaintiff Modesto RDA Against the Manufacturer Defendants,  
Distributor Defendants, and Chlorinated Solvent Equipment Manufacturers)**

39. Plaintiff refers to paragraphs 1 through 38 above, and by this reference incorporates them herein as though set forth in full.

40. The manufacturer defendants, distributor defendants, and the chlorinated solvent equipment manufacturers, and each of them, designed, manufactured, formulated, packaged, distributed and/or sold products containing chlorinated solvents and/or equipment specifically designed to store, use, process, and dispose of chlorinated solvents.

41. The manufacturer defendants, distributor defendants, and chlorinated solvent equipment defendants, and each of them, represented, asserted, claimed and warranted that chlorinated solvents and/or chlorinated solvent equipment could be used in conformity with accompanying instructions and labels in a manner which would not cause injury or damage.

42. The manufacturer defendants, distributor defendants, and chlorinated solvent equipment defendants, and each of them, knew, or should have know, that the chlorinated solvents and/or chlorinated solvent equipment would be used without inspection for defects, and if any inspection were performed, that the defects would not be discovered with the exercise of reasonable diligence.

43. These defendants, and each of them, designed, manufactured, formulated, packaged, distributed, applied, disposed of and/or sold chlorinated solvents and/or the chlorinated solvent equipment. Defendants knew, or should have known, that exposure to chlorinated solvents would create risk of harm to human health and contaminate soil, sewer and water systems.

44. Chlorinated solvents are defective products because, among other things: (a) chlorinated solvents cause extensive groundwater contamination, even when used in their foreseeable and intended manner; (b) even at extremely low levels, chlorinated solvents render drinking water unfit for purveying to consumers and create a public health hazard whenever normal and necessary maintenance is performed on the sewer system, or otherwise adversely impacts normal use of the sewer and water system; (c) chlorinated solvents pose a significant



1 threat to public health; (d) defendants failed to provide adequate warnings of the known and  
2 foreseeable risks of chlorinated solvents; and (e) defendants failed to conduct adequate  
3 scientific studies to evaluate the environmental fate and potential human health effects of  
4 chlorinated solvents.

5 45. At all relevant times the:

6 (a) chlorinated solvent equipment defendants were aware of the use of  
7 chlorinated solvents in the dry cleaning process or as cleaning solvents;

8 (b) defendant chlorinated solvent equipment manufacturers were aware of the  
9 typical waste and disposal practices resulting from the intended use of their equipment.

10 Despite such knowledge, these defendants designed their equipment in such a manner that  
11 would result in spills, leaks, and/or discharge of chlorinated solvents during normal operations;

12 (c) defendants improperly designed their chlorinated solvent equipment by  
13 failing to provide appropriate mechanisms to prevent and/or catch releases or spills of  
14 chlorinated solvents and its by-products for such equipment;

15 (d) defendants failed to design proper mechanisms which would  
16 eliminate, prevent and/or treat contamination arising from the dry cleaning process such as  
17 contamination from separator wastewater, spent filter cartridges, muck, and still bottoms;

18 (e) defendant chlorinated solvent equipment manufacturers knew, or should  
19 have known, of appropriate equipment redesigns, retrofits, and/or modifications to protect  
20 against environmental contamination associated with the use of such equipment, and  
21 negligently and/or consciously disregarded this knowledge and failed to redesign, modify  
22 and/or retrofit the subject equipment. Safer alternative designs and cleaning processes were  
23 scientifically feasible and economical;

24 (f) defendant manufacturers and distributors represented to the public and  
25 regulatory authorities that the products they sold would degrade into harmless substances and  
26 would not cause contamination. At the time said representations were made, said defendants  
27 knew, or should have known, these representations were false, misleading, and/or that there  
28 was no reasonable basis to believe that they were true; and

1 (g) when chlorinated solvents were applied and disposed of pursuant to the  
2 defendant manufacturers' recommended application and disposal procedures set forth in  
3 product brochures, trade group publication funded by defendants, seminars, meetings,  
4 advertisements, oral statements and by other means, chlorinated solvents contaminated the  
5 sewer systems because of defendant manufacturers' failure to recommend adequate and proper  
6 safeguards to avoid or prevent contamination of the sewer system.

7 46. The chlorinated solvent equipment is a defective product because among other  
8 things: (1) the chlorinated solvent equipment causes extensive contamination, even when used  
9 in a foreseeable and intended manners; (2) at extremely low levels, chlorinated solvents  
10 contaminate sewer and water systems; (3) the use of chlorinated solvent equipment poses a  
11 significant threat to public health; (4) defendants failed to provide adequate warnings of the  
12 known and foreseeable risk of the use of chlorinated solvent equipment; and (5) defendants  
13 failed to conduct adequate scientific studies to evaluate the environmental fate and potential  
14 human health effects of the use of chlorinated solvent equipment.

15 47. The above-described defects in chlorinated solvents and chlorinated solvent  
16 equipment existed when the chlorinated solvents and chlorinated solvent equipment left the  
17 defendants' possession. The chlorinated solvents and chlorinated solvent equipment were used  
18 in a manner in which they were foreseeably intended to be used.

19 48. As a proximate and direct result of the defects alleged herein, the defendant  
20 manufacturers, distributors, and chlorinated solvent equipment manufacturers, and each of  
21 them, contaminated the project area, all to plaintiffs' damage in an amount within the  
22 jurisdiction of this court.

23 49. As a further direct and proximate result of the acts and omissions of the  
24 defendants alleged herein, plaintiff has been damaged because it has been required to obtain,  
25 and will require, the services of engineers, hydrogeologists, contractors, and other  
26 professionals to investigate and remedy the contamination problem.

27 50. Plaintiff is informed and believes and thereon alleges that as a further direct and  
28 proximate result of the acts and omissions of the defendants alleged herein, plaintiff will

1 sustain substantially increased expenses and loss of the use of plaintiff's property, all to  
2 plaintiff's damage in an amount within the jurisdiction of this court. Plaintiff is also entitled to  
3 costs and prejudgment interest to the full extent permitted by law.

4         51. The manufacturer, distributor, and chlorinated solvent equipment defendants  
5 knew that it was substantially certain that their alleged acts and omissions described above  
6 would cause serious injury and property damage, including the contamination of the project  
7 area with chlorinated solvents. Defendants committed each of the above-described acts and  
8 omissions knowingly, willfully, and with oppression, fraud, and/or malice and with conscious  
9 disregard of the health and safety of others in at least the following respects:

10                 a) Defendants knew chlorinated solvents would contaminate the project  
11 area, water supplies, and the aquifer used by the public. Nonetheless, defendants instructed  
12 chlorinated solvents users to dispose of chlorinated solvents into public sewers with conscious  
13 disregard of the public health and safety.

14                 b) Although defendants knew that chlorinated solvents were human  
15 carcinogens and that chlorinated solvent equipment habitually leaked chlorinated solvents into  
16 the environment, causing property damage, defendants individually and through trade  
17 associates sought to suppress unfavorable publicity regarding chlorinated solvents,  
18 manufactured and funded favorable scientific studies knowing they were biased and/or  
19 meritless, and suppressed information regarding the hazards of chlorinated solvents from  
20 regulators, all for the sake of profit.

21         52. This conduct is reprehensible, despicable, and was performed with the intent to  
22 induce reliance by a class of persons including their customers, the public, regulatory agencies  
23 and plaintiff on false representations, and to promote sales of chlorinated solvents and  
24 chlorinated solvent equipment in conscious disregard of the known risks of injury to health and  
25 property. Defendants acted with willful and conscious disregard of the probable dangerous  
26 consequences of that conduct and its foreseeable impact upon plaintiff. Therefore, plaintiff  
27 requests an award of punitive damages in an amount to punish defendants.

28

**SECOND CAUSE OF ACTION**

**(Negligence by Plaintiff Modesto RDA Against All Defendants)**

53. Plaintiff realleges paragraphs 1 through 52 of this complaint and incorporates them herein by reference.

54. Defendants had a duty to use due care in the design, manufacture, formulation, handling, control, disposal, sale and labeling, use, instructions for use and disposal of chlorinated solvents and/or chlorinated solvent equipment to prevent, and to the extent feasible, to eliminate contamination of the project area with chlorinated solvents in concentrations which may pose adverse health effects.

55. The defendants so negligently, carelessly, and recklessly designed, manufactured, formulated, handled, labeled, instructed, controlled and/or sold chlorinated solvents and/or chlorinated solvent equipment, and so negligently, carelessly and recklessly applied chlorinated solvents, disposed of chlorinated solvents, containers, and waste and/or negligently recommended application and disposal techniques for chlorinated solvents that they directly and proximately caused chlorinated solvents contamination of the project area, resulting in the compensatory damages alleged in this Complaint, and a punitive damages award against defendants.

**THIRD CAUSE OF ACTION**

**(Negligence *Per Se* by Plaintiff Modesto RDA Against All Defendants)**

56. Plaintiff realleges paragraphs 1 through 55 of this complaint and incorporates them herein by reference.

57. Plaintiff alleges that the manufacturer defendants, chlorinated solvent equipment manufacturers, distributor defendants, and retailer defendants negligently, carelessly and recklessly designed, manufactured, formulated, handled, labeled, instructed, controlled and/or sold chlorinated solvents and/or chlorinated solvent equipment, and so negligently, carelessly and recklessly applied chlorinated solvents, disposed of chlorinated solvents, containers, and waste and/or negligently recommended application and disposal techniques for chlorinated solvents that they directly and proximately caused contamination of

1 the project area, and the municipal groundwater supply underlying the project area, in violation  
 2 of California Water Code sections 13050(m), 13350, and 13387, California Health and Safety  
 3 Code sections 5411, 5411.5, and 117555, and California Fish and Game section 5650, the  
 4 purpose of which are to set a standard of care or conduct to protect plaintiff and all persons or  
 5 property within its jurisdiction, as well as the environment, from the type of improper activities  
 6 engaged in by defendants, and each of them. Therefore, such improper activities and  
 7 violations constitute negligence *per se*. Plaintiff's investigation and discovery are not  
 8 complete. Therefore, plaintiff will seek leave of court to amend the complaint to allege  
 9 additional violations or, in the alternative, give notice to the defendants of any additional  
 10 statutory violations when determined.

11 58. Defendants, and each of them, have failed to comply with state law as detailed  
 12 above. As a direct and proximate result of the negligence *per se* of defendants, and each of  
 13 them, plaintiff has suffered damages, as alleged in this Complaint, including consequential,  
 14 incidental and general damages to be proven at trial.

#### 15 **FOURTH CAUSE OF ACTION**

##### 16 **(Continuing Trespass by Plaintiff Modesto RDA Against All Defendants)**

17 59. Plaintiff realleges paragraphs 1 through 58 of this complaint and incorporates  
 18 them herein by reference.

19 60. Plaintiff is the owner and/or actual possessor of the project area.

20 61. The defendants so negligently, recklessly and/or intentionally failed to properly  
 21 control, apply, use and/or dispose of chlorinated solvents that they directly and proximately  
 22 caused chlorinated solvents to contaminate the project area as follows:

23 a) The defendants participated in the use and disposal of chlorinated  
 24 solvents by intentionally, recklessly, and/or negligently controlling the use and disposal (and  
 25 providing instructions for the disposal) of chlorinated solvents by dry cleaning stores;  
 26 intentionally, recklessly, and/or negligently instructing dry cleaners about the purportedly  
 27 proper disposal methods for chlorinated solvents; and intentionally, recklessly, and/or  
 28 negligently calibrating, designing and manufacturing customers' chlorinated solvent equipment

1 in such a manner that chlorinated solvents were routinely disposed of into the project area on  
2 an ordinary basis. As a result of this activity, chlorinated solvents contaminated the project  
3 area.

4           b) Defendant manufacturers, distributors, and chlorinated solvent  
5 equipment manufacturers intentionally, recklessly, and/or negligently instructed end-users,  
6 including retail dry cleaners, about the disposal of chlorinated solvents through informational  
7 brochures, instructional seminars, trade organization brochures funded, published, and  
8 distributed by defendants, product labels and other literature. Said defendants recommended  
9 that chlorinated solvents be dumped into the sewer system and/or dumped on the ground,  
10 notwithstanding that said defendants knew, or should have known, that chlorinated solvents  
11 would contaminate the water and soil and pose a risk to health. As a result, when chlorinated  
12 solvents were disposed of pursuant to the techniques recommended by said defendants, the  
13 chlorinated solvents contaminated plaintiff's property. In addition, the chlorinated solvent  
14 equipment manufacturers designed their equipment to directly discharge chlorinated solvent  
15 waste into the sewer and/or instructed machine users to dispose of chlorinated solvent waste  
16 into the sewer.

17           c) During this time, defendant manufacturers, distributors, and chlorinated  
18 solvent equipment manufacturers (1) knew and/or reasonably should have known that  
19 chlorinated solvents had caused environmental contamination, and (2) had not conducted  
20 adequate testing to determine the environmental fate and potential human health effects of  
21 chlorinated solvents. Even though said defendants had sufficient information to determine that  
22 chlorinated solvents posed a threat to the environment, they did not modify their chlorinated  
23 solvent disposal instructions or provide appropriate advice, instruction or information to their  
24 customers regarding proper disposal and use needed to avoid environmental contamination.

25           d) Each of the defendants knew, or should have known, to avoid cleaning  
26 or rinsing empty chlorinated solvent containers and chlorinated solvent equipment residue and  
27 muck into sewers and/or soil. These defendants knew, or should have known, that this practice  
28 resulted in contamination. Despite these facts, defendants continued these negligent practices.



1 e) Defendants knew, or should have known, that chlorinated solvents were  
2 persistent, and that chlorinated solvents could contaminate soil and groundwater.

3 62. The chlorinated solvent manufacturer defendants, the distributor defendants, the  
4 chlorinated solvent equipment manufacturer defendants, and the retailer defendants were each  
5 a substantial factor in bringing about the resulting contamination of plaintiff's possessory  
6 interests, and each of the defendants aided and abetted the continuing trespasses and are jointly  
7 responsible for the injuries and damages caused to plaintiff as alleged in this Complaint and  
8 based on the following alleged conduct:

9 a) The retailer defendants, and each of them, intentionally and carelessly  
10 disposed of PERC waste into plaintiff's sewer system, or by dumping toxic PERC waste onto  
11 the ground, causing it to intrude upon, contaminate, and damage plaintiff's possessory  
12 interests;

13 b) The chlorinated solvent equipment manufacturers manufactured,  
14 designed, distributed, prepared and installed dry cleaning equipment and/or parts which  
15 defendants knew, or should have known, would directly discharge and leak toxic PERC into  
16 the sewer system and ground, and intrude upon, contaminate, and damage plaintiff's  
17 possessory interests;

18 c) The chlorinated solvent manufacturers, the distributor defendants, and  
19 the chlorinated solvent equipment manufacturer defendants intentionally caused the retailer  
20 defendants to dispose of the toxic chlorinated solvent waste by instructing, requesting and/or  
21 inducing the retailer defendants to dump chlorinated solvent waste onto the ground, or  
22 discharge chlorinated solvent waste directly into the sewer system, or pour chlorinated solvent  
23 waste down the drain, which caused the toxic chlorinated solvent waste to intrude upon  
24 plaintiff's possessory interests and cause the alleged harm and damage; and

25 d) At the time, the chlorinated solvent manufacturers, the distributor  
26 defendants, and the chlorinated equipment manufacturer defendants intentionally instructed,  
27 requested and/or induced the alleged tortious conduct by the retailer defendants, the  
28 chlorinated solvent manufacturer defendants, the distributor defendants, and the chlorinated



1 solvent equipment manufacturer defendants knew, or should have known, of the conditions  
2 under which the delicts were to be done, the toxicity of the chlorinated solvent waste, and the  
3 consequences of the acts. These defendants instructed, requested and/or induced the delicts  
4 and were a substantial factor in causing the resulting contamination of plaintiff's possessory  
5 interests, and further aided and abetted the delicts, and are jointly liable with the retailer  
6 defendants with respect to the injuries and damages sustained by plaintiff. Plaintiff also seeks  
7 punitive damages against the defendants.

8 63. The chlorinated solvent contamination of the project area has varied over time  
9 and can be reasonably abated. Plaintiff has engaged, or will engage, in abatement programs.

#### 10 **FIFTH CAUSE OF ACTION**

##### 11 **(Private Nuisance by Plaintiff Modesto RDA Against All Defendants)**

12 64. Plaintiff realleges paragraphs 1 through 63 of this complaint and incorporates  
13 them herein by reference.

14 65. The negligent, reckless, intentional and ultrahazardous activity of the  
15 defendants, and each of them, has resulted in the contamination of plaintiff's project area and  
16 constitutes a continuing nuisance within the meaning of Civil Code section 3479. The  
17 chlorinated solvent contamination of the project area, and the municipal groundwater supply  
18 underlying the project area, has varied over time and can be reasonably abated. Plaintiff has  
19 engaged, and will engage, in abatement programs.

20 66. Since plaintiff is the property owner adversely affected by the nuisance, it is a  
21 private nuisance within the meaning of Civil Code section 3481.

22 67. As a direct and proximate result of the nuisance, plaintiff has been damaged and  
23 is entitled to the compensatory damages alleged herein, and seeks punitive damages against the  
24 defendants.

#### 25 **SIXTH CAUSE OF ACTION**

##### 26 **(Private Nuisance *Per Se* by Plaintiff Modesto RDA Against All Defendants)**

27 68. Plaintiff realleges paragraphs 1 through 67 of this complaint and incorporates  
28 them herein by reference.

69. The negligent, reckless, intentional and ultrahazardous activity of defendants, and each of them, resulted in the contamination of plaintiff's project area, and the municipal groundwater supply underlying the project area, in violation of California Water Code sections 13050(m), 13350, and 13387, California Health and Safety Code sections 5411, 5411.5, and 117555, and California Fish and Game section 5650, the purpose of which are to set a standard of care or conduct to protect plaintiff and all persons and property within its jurisdiction, as well as the environment, from the type of improper activities engaged in by defendants, and each of them, as alleged in this Complaint. Therefore, such improper activities and violations constitute a private nuisance *per se*.

70. Defendants, and each of them, have failed to comply with the state law as detailed above.

71. Plaintiff has sustained special injury as a result of these nuisances, including incurring investigative costs. As a further direct and proximate result of the private nuisance *per se* created by defendants, and each of them, plaintiff has suffered damages as alleged in this Complaint, including other consequential, incident, and general damages to be proven at trial.

#### **SEVENTH CAUSE OF ACTION**

##### **(Public Nuisance by All Plaintiffs Against All Defendants)**

72. Plaintiffs realleges paragraphs 1 through 71 of this complaint and incorporates them herein by reference.

73. The negligent, reckless, intentional and ultrahazardous activity of the defendants, and each of them, as described in this Complaint, gives rise to a public nuisance within the meaning of California Civil Code sections 3479 and 3480, which affects not only the plaintiff, but also the entire community of the City of Modesto, and/or the comfort and convenience of a considerable number of residents and visitors to the City of Modesto, although the extent of the damages inflicted upon individuals may be unequal.

74. Because the contamination created by the negligent, reckless, intentional and ultrahazardous activity of defendants, and each of them, has resulted in contamination that

1 continues, and threatens to continue, to spread to adjacent properties, and into the municipal  
2 groundwater supply within the jurisdiction of the plaintiff and for which plaintiff possesses a  
3 legally cognizable property interest on behalf of its residents, it is of great public concern. As  
4 a result, plaintiff has incurred and will continue to incur substantial and necessary response  
5 costs, including investigatory expenses, attorneys' fees, consulting fees, oversight costs,  
6 interest and other response costs. For the aforesaid reasons, plaintiff has and will suffer  
7 injuries different in kind from those suffered by the general public.

8         75. The negligent, reckless, intentional and ultrahazardous activity of the  
9 defendants, and each of them, which has resulted in contamination, and threatens to continue  
10 to contaminate, the plaintiff's project area and the public's right to use and enjoy its  
11 groundwater supply, is also a public nuisance as defined by Title 4, Chapter 12,  
12 Section 4-12.300, of the Modesto Municipal Code, for which plaintiff seeks remedies in  
13 accordance with Title 4, Chapter 12, Article 2.

14         76. Plaintiffs allege that as a proximate result of the negligent, reckless, intentional  
15 and ultrahazardous activity of the defendants, and each of them, which has resulted in the  
16 contamination of plaintiff's project area and constitutes a public nuisance. Plaintiffs have, and  
17 will, incur substantial expense, as previously described herein, to abate the public nuisance.

18         77. Plaintiffs assert that litigation against defendants, and each of them, is necessary  
19 because it raises issues of public importance and policy which are in need of vindication by  
20 litigation, presents the necessity of enforcement of said issues and rights resulting from special  
21 burdens which fall on plaintiff, and will benefit the health and safety of the community.

22         78. Plaintiff City of Modesto Redevelopment Agency is entitled to recover from  
23 defendants, and each of them, all costs presently incurred or which may be incurred in  
24 investigating and verifying the contamination at the sites, for past and future costs to remediate  
25 the sites. Plaintiff is also entitled to all available remedies as described in Title 4, Chapter 12,  
26 Article 2, of the Modesto Municipal Code, for attorneys' fees and interest, and for other  
27 response costs and expenses. The exact amount owing to plaintiff will be determined at trial  
28 according to proof. Plaintiff The People seeks the abatement and injunction of the nuisance

1 and all legally available damages and costs, the value of which is within the jurisdiction of this  
2 court.

### 3 **EIGHTH CAUSE OF ACTION**

#### 4 **(Public Nuisance *Per Se* by All Plaintiffs Against All Defendants)**

5 79. Plaintiffs reallege paragraphs 1 through 78 of this complaint and incorporates  
6 them herein by reference.

7 80. Plaintiffs allege that the negligent, reckless, intentional and ultrahazardous  
8 activity of defendants, and each of them, which has resulted in contamination of plaintiff's  
9 project area, as well as the municipal groundwater supply underlying the project area, and  
10 constitutes a public nuisance, is a violation of California Water Code sections 13050(m),  
11 13350, and 13387, California Health and Safety Code sections 5411, 5411.5, and 117555, and  
12 California Fish and Game section 5650, the purpose of which are to set a standard of care or  
13 conduct to protect plaintiff and all persons or property within its jurisdiction, as well as the  
14 environment, from the type of improper activities engaged in by defendants, and each of them.  
15 Therefore, such improper activities and violations constitute a public nuisance *per se*.

16 81. Defendants, and each of them, have failed to comply with the state law as  
17 detailed above. As a direct and proximate result of the public nuisance *per se* created by  
18 defendants, and each of them, plaintiff has suffered damages as previously described herein,  
19 including other consequential, incidental and general damages to be proven at trial.

20 82. Section 731 of the California Code of Civil Procedure authorizes plaintiffs to  
21 bring a civil action to abate or enjoin a public nuisance.

22 83. Plaintiffs, and each of them, request that the public nuisance, as described in  
23 this Complaint, be enjoined or abated.

### 24 **NINTH CAUSE OF ACTION**

#### 25 **(Response Costs Under California Superfund Act, Health and Safety Code §§ 25300 26 et seq., by Plaintiff Modesto RDA Against All Defendants)**

27 84. Plaintiff realleges paragraphs 1 through 83 of this complaint and incorporates  
28 them herein by reference.

1           85.     Section 25323.5(a) of the California Health and Safety Code defines a person  
2 who is liable under the Carpenter-Presley-Tanner Hazardous Substance Account Act  
3 ("California Superfund"). Defendants, and each of them, are "responsible parties" under  
4 California Superfund and liable to plaintiff for response costs and other damages.

5           86.     All of the contaminants that defendants disposed of and released into the  
6 plaintiff's project area and the municipal groundwater supply constitute substances specifically  
7 listed and designated as "hazardous substances" within the meaning of California Health and  
8 Safety Code section 25316.

9           87.     The premises and buildings within plaintiff's project area each constitute a  
10 "facility" under California Superfund.

11           88.     As a proximate cause of defendants' release of hazardous substances into the  
12 environment, including plaintiff's project area, and the municipal groundwater supply  
13 underlying the project area, plaintiff has had to incur necessary response costs, including  
14 attorneys' fees and expert witness fees, for which defendants are strictly liable pursuant to  
15 California Health and Safety Code section 25363. All of the costs plaintiff has incurred to  
16 remove and/or remediate the contamination at the premises have been in accordance with  
17 Chapter 6.8 of the Hazardous Substances Account Act. Notice of commencement of this  
18 action has been given to the Director of Toxic Substances Control pursuant to California  
19 Health and Safety Code section 25363(e).

20           89.     Plaintiff seeks contribution and/or indemnity for all response costs under  
21 California Health and Safety Code section 25363, which provides that any person who has  
22 incurred removal or remedial action costs may seek contribution or indemnity from any  
23 responsible party.

24                   **TENTH CAUSE OF ACTION**

25                   **(Declaratory Relief Under California Superfund Act, Health and Safety Code**  
26                   **Section 25300 et seq., by Plaintiff Modesto RDA Against All Defendants)**

27           90.     Plaintiff realleges paragraphs 1 through 89 of this complaint and incorporates  
28 them herein by reference.

91. Because the extent and magnitude of the contamination at the premises is not fully known at this time, and the investigatory and remedial works are ongoing, plaintiff will incur necessary response costs, including but not limited to investigatory, remedial and removal expenses, attorneys' fees and interest in the future.

92. Pursuant to California Health and Safety Code section 25363, plaintiff is entitled to a declaratory judgment establishing the liability of defendants, and each of them, for such response costs for the purpose of this and any subsequent action or actions to recover further response costs.

#### **ELEVENTH CAUSE OF ACTION**

##### **(Ultrahazardous Activity by Plaintiff Modesto RDA Against the Retailer Defendants)**

93. Plaintiff reallege paragraphs 1 through 92 above, and incorporates them herein by reference.

94. The retailer defendants, and each of them, engaged in the ultrahazardous activity of using and then disposing of chlorinated solvents into open sewers and/or on the soil, notwithstanding the fact that chlorinated solvents are a serious and substantial risk of harm to health, including cancer, liver disease and death. Chlorinated solvents further constitute a serious and substantial toxic contamination which renders water unsuitable for drinking and contaminates sewers and soil. The use and disposal of chlorinated solvents is unsafe and harmful, even though the utmost care is utilized in the use and disposal of chlorinated solvents.

95. As a direct result of this ultrahazardous activity, the project area has been contaminated, resulting in the alleged damages sustained by plaintiff.

#### **TWELFTH CAUSE OF ACTION**

##### **(Cost Recovery under the Polanco Redevelopment Act, Health and Safety Code Section 33459 et seq., by Plaintiff Modesto RDA Against All Defendants)**

96. Plaintiff realleges paragraphs 1 through 95 above, and incorporates them herein by reference.

97. Releases of PCE, TCE, and their respective degradation products listed as "hazardous substance(s)," as that term is defined in Health and Safety Code section 33459(c),

1 occurred inside the project area during the time when defendants committed the acts described  
2 in this Complaint.

3 98. Plaintiff is informed and believes that defendants, and each of them, are  
4 "responsible parties" as that term is defined in Health and Safety Code section 33459(h).

5 99. Pursuant to its authority under Health and Safety Code section 33459 et seq.,  
6 plaintiff has issued Corrective Action Notices to defendants, and each of them, for the  
7 hazardous substance releases inside the project area. Defendants have failed to comply with  
8 the requirements of said notices and the requirements of California Health and Safety Code  
9 section 33459 et seq.

10 100. The project area is, and at all relevant times has been, under plaintiff's  
11 jurisdiction.

12 101. Plaintiff has undertaken action to investigate, remedy and/or remove the  
13 releases of hazardous substances, which actions are continuing and are not completed.

14 102. Plaintiff has incurred and is continuing to incur investigation, remedial and/or  
15 removal costs in response to the releases of hazardous substances inside the project area, which  
16 costs were incurred in accordance with applicable procurement procedures.

17 103. Plaintiff has complied with the provisions of Health and Safety Code  
18 section 33459.1(a) concerning notification to local health and building departments and the  
19 appropriate oversight agency. Plaintiff has obtained and/or is obtaining cleanup guidelines and  
20 necessary approvals from all appropriate regulatory agencies to remedy and/or remove the  
21 releases of hazardous substances on, under, or from property within the project area.

22 104. To date, the response actions taken by plaintiff were deemed by it to be  
23 consistent with the requirements of Health and Safety Code section 33459.1(a)(1) and  
24 necessary to remedy or remove releases of hazardous substances on, under, or from property  
25 within the project area.

26 105. Plaintiff is entitled to recover from defendants, and each of them, all costs  
27 presently incurred or which may be incurred by plaintiff in investigating and verifying the  
28 contamination in the project area, for past and future costs to remedy and/or remove the



hazardous substances from the project area, for attorneys' fees and interest, and for other costs and expenses. The exact amount owing to plaintiff will be determined at trial according to proof.

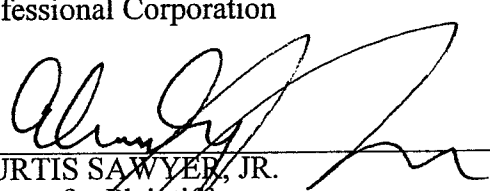
**WHEREFORE**, plaintiff requests judgment against defendants, and each of them, for:

1. Compensatory damages, according to proof;
2. Punitive damages against the chlorinated solvent manufacturer defendants, distributor defendants, and chlorinated solvent equipment manufacturer defendants, in an amount sufficient to punish and to deter defendants from ever committing the same or similar acts;
3. All available remedies as described in Title 4, Chapter 12, Article 2, of the Modesto Municipal Code;
4. For declaratory relief and orders as to defendants' liability to plaintiff for the costs and expenses as set forth in the tenth cause of action herein;
5. For relief and orders of abatement or enjoinder of nuisance as set forth in the seventh and eight causes of action herein;
6. For litigation expenses, including attorneys' fees;
7. For costs of suit incurred herein, and prejudgment interest to the full extent permitted by law; and
8. For such other and further relief as the court may deem just and proper.

Dated: January 4, 2002

**MILLER, SHER & SAWYER**  
A Professional Corporation

By:

  
A. CURTIS SAWYER, JR.  
Attorneys for Plaintiffs  
CITY OF MODESTO REDEVELOPMENT  
AGENCY; and THE PEOPLE OF THE STATE  
OF CALIFORNIA EX REL THE CITY  
ATTORNEY OF THE CITY OF MODESTO

**PROOF OF SERVICE BY MAIL**

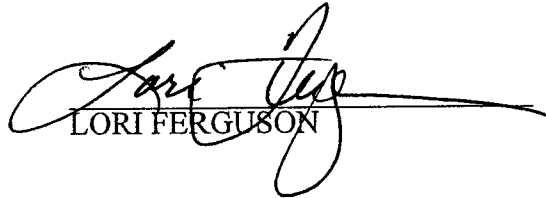
I, the undersigned, declare that I am, and was at the time of service of the paper(s) herein referred to, over the age of 18 years and not a party to this action. My business address is 100 Howe Avenue, Suite S-120, Sacramento, California 95825, which is located in the county in which this mailing occurred. I am familiar with my office's business practice for collection and processing of correspondence for mailing with the United States Postal Service, and under such practice the correspondence would be deposited with the United States Postal Service, postage pre-paid, the same day in the ordinary course of business.

On January 4, 2002, I served **FOURTH AMENDED COMPLAINT FOR TOXIC TORT DAMAGES AND OTHER RELIEF RE: (1) STRICT LIABILITY; (2) NEGLIGENCE; (3) NEGLIGENCE *PER SE*; (4) CONTINUING TRESPASS; (5) PRIVATE NUISANCE; (6) PRIVATE NUISANCE *PER SE*; (7) PUBLIC NUISANCE; (8) PUBLIC NUISANCE *PER SE*; (9) RESPONSE COSTS UNDER CALIFORNIA SUPERFUND ACT; (10) DECLARATORY RELIEF UNDER CALIFORNIA SUPERFUND ACT; (11) ULTRAHAZARDOUS ACTIVITY; AND (12) COST RECOVERY UNDER POLANCO REDEVELOPMENT ACT** on the following persons or parties by placing a true copy thereof in a sealed envelope, showing the addresses set forth below, for collection and deposit in the United States Postal Service on that date following ordinary business practices:

See Attached List

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on January 4, 2002, at Sacramento, California.

  
LORI FERGUSON

Duane C. Miller, #57812  
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Attorneys for Plaintiffs  
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MODESTO SEWER DISTRICT NO. 1; and  
THE PEOPLE OF THE STATE OF CALIFORNIA  
EX REL THE CITY ATTORNEY OF  
THE CITY OF MODESTO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN FRANCISCO**

CITY OF MODESTO; CITY OF  
MODESTO SEWER DISTRICT NO. 1;  
and THE PEOPLE OF THE STATE OF  
CALIFORNIA EX REL THE CITY  
ATTORNEY OF THE CITY OF  
MODESTO

Plaintiffs,

v.

THE DOW CHEMICAL COMPANY; E.I.  
DUPONT DE NEMOURS AND  
COMPANY; M.B.L., INC.; R.R.  
STREET & CO., INC.; VULCAN  
MATERIALS COMPANY; PPG  
INDUSTRIES, INC.; WASHEX  
MACHINERY OF CALIFORNIA, INC.;  
ACME CLEANERS; MODERNISTIC  
CLEANERS; MODESTO STEAM  
LAUNDRY & CLEANERS, INC.;  
HALFORD CLEANERS; SAV-ON  
MACHINERY COMPANY, INC.;  
OCCIDENTAL CHEMICAL  
CORPORATION [DOE 1]; STAUFFER  
CHEMICAL COMPANY [DOE 2];

Case No. 999643

**THIRD AMENDED COMPLAINT FOR  
DAMAGES AND OTHER RELIEF  
(SOLVENT CONTAMINATION):**  
**(1) STRICT LIABILITY;**  
**(2) NEGLIGENCE; (3) NEGLIGENCE**  
**PER SE; (4) CONTINUING TRESPASS;**  
**(5) PRIVATE NUISANCE;**  
**(6) PRIVATE NUISANCE PER SE;**  
**(7) PUBLIC NUISANCE;**  
**(8) PUBLIC NUISANCE PER SE;**  
**(9) RESPONSE COSTS UNDER**  
**CALIFORNIA SUPERFUND ACT;**  
**(10) DECLARATORY RELIEF UNDER**  
**CALIFORNIA SUPERFUND ACT;**  
**(11) ULTRAHAZARDOUS ACTIVITY;**  
**AND**  
**(12) UTILITY TAMPERING**

**[FILED BY FACSIMILE]**

**JAN 9 2002**

1 FULLER SUPPLY COMPANY )  
 [DOE 251]; GOSS JEWETT CO. OF )  
 2 NORTHERN CALIFORNIA; [DOE 252]; )  
 WORKROOM SUPPLY INC. [DOE 253]; )  
 3 ECHCO SALES CO. [DOE 254]; )  
 WAMAX CORPORATION, AKA )  
 4 WASHEX MACHINERY )  
 CORPORATION [DOE 501]; WHITE )  
 5 CONSOLIDATED INDUSTRIES, INC. )  
 [DOE 502]; HOYT CORPORATION )  
 6 [DOE 503]; MARVEL )  
 MANUFACTURING [DOE 504]; )  
 7 AMERICAN LAUNDRY MACHINE, )  
 FORMERLY A DIVISION OF MCGRAW )  
 8 EDISON CO. [DOE 505]; AMERICAN )  
 LAUNDRY MACHINERY, INC. D/B/A )  
 9 AJAX MANUFACTURING DIVISION & )  
 MARTIN EQUIPMENT [DOE 506]; )  
 10 BOEWE PASSAT, N/K/A BOWE )  
 PERMAC, INC. [DOE 507]; VIC )  
 11 MANUFACTURING COMPANY )  
 [DOE 508]; LCI MACHINE [DOE 509]; )  
 12 MCGRAW EDISON COMPANY, )  
 INDIVIDUALLY AND DBA AMERICAN )  
 13 LAUNDRY MACHINERY [DOE 510]; )  
 and DOES 3 through 1,000, inclusive, )  
 14 Defendants. )  
 15

16 Plaintiffs allege that at all relevant times:

## 17 **I. THE PARTIES**

### 18 **A. The Plaintiffs**

19 1. Plaintiff, the City of Modesto ("Modesto"), is a public and municipal entity  
 20 located in Stanislaus County, California. Modesto is a charter city. Modesto owns, operates,  
 21 maintains, supervises, and/or controls the sewer and water system, including, but not limited  
 22 to, all wells, sewers, pipes, connectors, transmission facilities, sewage and water purification  
 23 facilities, related and associated equipment, appurtenances, real property and easements,  
 24 facilities, soil and groundwater ("sewer and water system").

25 2. Plaintiff, City of Modesto Sewer District No. 1 ("Sewer District"), is a public  
 26 agency which also jointly owns, operates, maintains, supervises, and/or controls the sewer  
 27 system. Modesto and the Sewer District will be collectively referred to as "plaintiffs."

28 3. Generally, plaintiffs allege that its sewer and water system is contaminated with

1 toxic chlorinated solvents as a direct result of defendants' negligent conduct in manufacturing,  
2 distributing, using, controlling, and disposing of chlorinated solvents, and the equipment  
3 designed to use chlorinated solvents, which caused chlorinated solvents to contaminate  
4 plaintiffs' sewer and water system.

5 4. Plaintiff The People of the State of California Ex Rel the City Attorney of the  
6 City of Modesto is the Modesto City Attorney's office acting in the name of the people of the  
7 State of California ("The People"). Plaintiff The People is asserting claims only in the seventh  
8 and eighth causes of action herein, and not in the remaining causes of action stated in this  
9 complaint.

10 **B. The Chlorinated Solvent Manufacturer Defendants**

11 5. Defendant The Dow Chemical Company ("Dow") is a Delaware corporation  
12 with its principal place of business located in Midland, Michigan.

13 6. Defendant E.I. Dupont De Nemours and Company ("Dupont") is a Delaware  
14 corporation with its principal place of business in Wilmington, Delaware.

15 7. Defendant PPG Industries, Inc. ("PPG") is a Pennsylvania corporation with its  
16 principal place of business in Pittsburgh, Pennsylvania.

17 8. Defendant Vulcan Materials Company ("Vulcan") is a New Jersey corporation  
18 with its principal place of business in Homewood, Alabama.

19 9. Plaintiffs are ignorant of the true names and/or capacities of the defendants sued  
20 under the fictitious names of DOES 1 through 250, inclusive. Since plaintiffs filed the original  
21 Complaint herein, the following DOE defendant(s) have been identified and substituted in this  
22 action: Occidental Chemical Corporation [DOE 1]; and Stauffer Chemical Company [DOE 2].

23 10. Defendants Dow, Dupont, PPG, Vulcan, and DOES 1 through 125, and each of  
24 them: (1) manufactured, distributed, transported, packaged, sold and/or disposed of toxic  
25 chlorinated solvents called perchloroethylene ("PERC") and/or trichloroethylene ("TCE").  
26 PERC and TCE, and their degradation products and ingredients, are referred to collectively as  
27 "chlorinated solvents" in the State of California and/or were involved in the manufacture of  
28 equipment sold in the State of California specifically designed to store, use, process, and

1 dispose of chlorinated solvents; (2) DOES 126 through 250, and each of them, manufactured,  
2 distributed, transported, packaged, sold and/or disposed of TCE in the State of California;  
3 (3) defendants Dow, Dupont, Occidental, PPG, Vulcan, and DOES 1 through 250, and each of  
4 them, were legally responsible for and committed each of the tortious and wrongful acts  
5 alleged in this Complaint; and (4) in doing the tortious and wrongful acts alleged in the  
6 Complaint, acted in the capacity of co-conspirator, aider, abettor, joint venturer, partner, agent,  
7 alter ego, principal, successor-in-interest, surviving corporation, fraudulent transferee,  
8 fraudulent transferor, controller, alter ego, licensee, licensor, patent holder and/or indemnitor  
9 of each of the remaining DOE and named defendants.

10 11. Each of the defendants named in paragraphs 1 through 10 above, and DOE  
11 defendants 1 through 250, will be collectively referred to as the "manufacturer defendants" or  
12 "manufacturers."

13 **C. Distributor Defendants**

14 12. Defendant M.B.L., Inc. ("MBL") is a California corporation with its principal  
15 place of business in Santa Clara, California.

16 13. Defendant R.R. Street & Co. ("Street") is a corporation with its principal  
17 place of business in Naperville, Illinois.

18 14. Plaintiffs are ignorant of the true names and/or capacities of the defendants sued  
19 herein under the fictitious names of DOES 251 through 500, inclusive. Since plaintiffs filed  
20 the original Complaint herein, the following DOE distributor defendants have been identified  
21 and substituted in this action: Fuller Supply Company [DOE 251]; Goss Jewett Co. of  
22 Northern California [DOE 252]; Workroom Supply, Inc. [DOE 253]; and Echco Sales Co.  
23 [DOE 254].

24 15. MBL, Street, and DOES 251 through 500 ("distributor defendants"), and each  
25 of them: (1) purchased chlorinated solvents from one or more of the manufacturer defendants,  
26 and then resold the chlorinated solvents in the State of California to Modesto dry cleaners,  
27 including one or more of the retailer defendants; (2) distributed, designed, assembled,  
28 maintained, controlled, operated and/or repaired equipment parts, replacement parts, and



1 appurtenances, including, but not limited to, dry cleaning equipment in the State of California  
2 specifically designed for the use, application, and disposal of chlorinated solvents by Modesto  
3 dry cleaners, including the retailer defendants; (3) would engage in service visits and  
4 inspections on the premises of Modesto dry cleaners, including the dry cleaning defendants for  
5 the purposes of promoting their dry cleaning solvents and dry cleaning equipment products and  
6 testing and inspecting Modesto dry cleaner equipment which included witnessing dry cleaner's  
7 disposal of chlorinated solvents; (4) were legally responsible for and committed each of the  
8 tortious and wrongful acts alleged in this Complaint; and (5) in doing the tortious and  
9 wrongful acts alleged in the Complaint, acted in the capacity of co-conspirator, aider, abettor,  
10 joint venturer, partner, agent, principal, successor-in-interest, surviving corporation, fraudulent  
11 transferee, fraudulent transferor, controller, alter ego, licensee, licensor, patent holder and/or  
12 indemnitor of each of the remaining DOE and named defendants.

13 16. In addition to engaging in the distributor activities more fully described in  
14 paragraph 15 above, DOES 400 through 500 also engaged in the manufacturing acts and  
15 activities fully described in paragraph 10 above, which is incorporated in full herein.

16 **D. Chlorinated Solvent Equipment Manufacturers**

17 17. Defendant Sav-on Machinery Company, Inc. ("Sav-On") has sold chlorinated  
18 solvent equipment for the past twenty (20) years to dry cleaners in Northern California. At all  
19 relevant times, the principal place of business of Sav-On is San Francisco, California.  
20 Defendant Sav-On has been dismissed from this action without prejudice.

21 18. Defendant Washex Machinery of California, Inc. ("Washex") is a corporation  
22 with its principal place of business in Burbank, California.

23 19. Plaintiffs are ignorant of the true names and/or capacities of the defendants sued  
24 herein under the fictitious names of DOES 501 through 750, inclusive ("chlorinated solvent  
25 equipment manufacturers"). Since plaintiffs filed the original Complaint herein, the following  
26 DOE chlorinated solvent equipment manufacturers have been identified and substituted in this  
27 action: Wamax Corporation, aka Washex Machinery Corporation [DOE 501]; White  
28 Consolidated Industries, Inc. [DOE 502]; Hoyt Corporation [DOE 503]; Marvel



1 Manufacturing [DOE 504]; American Laundry Machine, Formerly a Division of McGraw  
2 Edison Co. [DOE 505]; American Laundry Machinery, Inc. d/b/a Ajax Manufacturing  
3 Division & Martin Equipment [DOE 506]; Boewe Passat, n/k/a Bowe Permac, Inc.  
4 [DOE 507]; Vic Manufacturing Company [DOE 508]; LCI Machine [DOE 509]; and McGraw  
5 Edison Company, individually and dba American Laundry Machinery [DOE 510].

6       20. Defendants Sav-On, Washex, and DOES 501 through 750, and each of them:  
7 (1) manufactured, distributed, designed, assembled, maintained, supervised, controlled, sold,  
8 operated and/or repaired equipment, parts, and appurtenances, including, but not limited to, dry  
9 cleaning equipment, in the State of California specifically designed for the storage, application,  
10 and disposal of chlorinated solvents by the retailer defendants and Modesto dry cleaners that  
11 have contributed to the alleged contamination ("chlorinated solvent equipment"); (2) were  
12 legally responsible for and committed each of the tortious and wrongful acts alleged in this  
13 complaint; and (3) in doing the tortious and wrongful acts alleged in the complaint, acted in the  
14 capacity of co-conspirator, aider, abettor, joint venturer, partner, agent, principal, successor-in-  
15 interest, surviving corporation, fraudulent transferee, fraudulent transferor, controller,  
16 alter ego, licensee, licensor, patent holder and/or indemnitor of each of the remaining DOE and  
17 named defendants.

18       21. In addition to the chlorinated solvent equipment activities alleged in  
19 paragraph 20 above, DOE defendants 650 through 750 also engaged in the chlorinated solvent  
20 manufacturing acts and activities alleged in paragraph 10, which is incorporated herein by  
21 reference.

22       **E. The Retailer Defendants**

23       22. Defendant Acme Cleaners is a business organization (form unknown) with its  
24 principal place of business located in the City of Modesto, California.

25       23. Defendant Modernistic Cleaners ("Modernistic") is a business organization  
26 (form unknown) with its principal place of business located in the City of Modesto, California.

27       24. Defendant Modesto Steam Laundry & Cleaners, Inc. is a business organization  
28 (form unknown) with its principal place of business located in the City of Modesto, California.

25 Defendant Halford Cleaners ("Halford") is a business organization  
(form unknown) with its principal place of business located in the City of Modesto, California.

26 Plaintiffs are ignorant of the true names and/or capacities of the defendants sued  
herein under the fictitious names of DOES 751 through 1,000, inclusive. Plaintiffs'  
investigation and testing of the sewer systems, soils and groundwater is continuing.

27. The defendants named in paragraphs 22 through 25 above, and DOES 751  
through 1,000, and each of them: (1) owned and/or operated retail dry cleaners, laundry  
facilities, real property, and/or some other business or personal capacity involving the use of  
chlorinated solvents; (2) were legally responsible for and committed each of the tortious and  
wrongful acts alleged in this complaint; and (3) in doing the tortious and wrongful acts alleged  
in the complaint, acted in the capacity of co-conspirator, aider, abettor, joint venturer, agent,  
principal, successor-in-interest, surviving corporation, fraudulent transferee, fraudulent  
transferor, controller, alter ego, licensee, licensor, patent holder and/or indemnitor of each of  
the remaining DOE and named defendants.

28 Each of the defendants named in paragraphs 22 through 25, and DOE  
defendants 751 through 1,000, are collectively referred to as the "retailer defendants."

## **II. BACKGROUND OF CHLORINATED SOLVENTS**

29. Perchloroethylene ("PERC") and trichloroethylene ("TCE") are toxic organic  
compounds. PERC and TCE have been used as cleaning solvents. Dry cleaning machines  
were designed and developed to use PERC and TCE. PERC was the most widely used dry  
cleaning chemical in the United States. PERC is also referred to as PCE, carbon dichloride,  
and 1,1,2,2-tetrachloroethylene. In soil, PERC can be transformed by biological degradation  
and by reductive dehalogenation into TCE, vinyl chloride, and trichloromethane ("TCA").

30 In or about the 1940's, the defendants knew, or should have known, that PERC  
could be absorbed in the lungs, skin, and gastrointestinal tract which could cause severe  
damage to the liver, kidneys, central nervous system and other toxic effects. PERC is a known  
carcinogen which causes genetic damage. The defendants also knew, or should have known,

1 that PERC and its degradation products and ingredients create a substantial risk of harm to  
2 groundwater and soil.

3 31. Similarly, TCE, including its degradation products and ingredients, is a known  
4 carcinogen which can cause cancer, liver and kidney damage and death. Since the early  
5 1900's, among other things, TCE was marketed as a chemical to extract soybean meal for use  
6 as cattle feed. This use of TCE was discontinued in the 1950's after numerous reports of  
7 widespread hemorrhagic cattle disease and deaths directly linked to the ingestion of TCE.

8 32. Commencing in or about the 1940's, there were published reports of  
9 groundwater contamination caused by TCE which rendered water unfit for drinking.  
10 Defendants knew, or should have known, that TCE and its degradation products and  
11 ingredients create a substantial risk of harm to the environment, groundwater, and soil.

12 33. Notwithstanding their knowledge of health and environmental hazards of  
13 chlorinated solvents, the manufacturing defendants, chlorinated solvent equipment defendants,  
14 and distributor defendants designed, manufactured, marketed, and/or supplied chlorinated  
15 solvents and/or chlorinated solvent dry cleaning equipment and/or replacement parts to retail  
16 dry cleaners, including the retailer defendants. The equipment was specifically designed to  
17 store, use, process, and dispose of chlorinated solvents. Defendants were aware of the typical  
18 use, waste, and disposal practices resulting from the intended use of their equipment, including  
19 the customary practice of dumping chlorinated solvent wastewater and muck into the public  
20 sewer systems, and the habitual problem with multiple leaks of chlorinated solvents into the  
21 environment during the foreseeable and expected use of chlorinated solvent equipment.

22 34. Notwithstanding the fact that the manufacturer defendants, the chlorinated  
23 solvent equipment defendants, and distributor defendants knew, or should have known, of the  
24 serious health hazards caused by the use and disposal of chlorinated solvents and that  
25 chlorinated solvents pass through sewer pipes and concrete floors, thereby contaminating soil  
26 and migrating into groundwater, defendants negligently and carelessly: (1) issued instructions  
27 that chlorinated solvents could be discharged into the sewers, permitting chlorinated solvents  
28 to contaminate the sewer system and surrounding property; and/or (2) designed and operated

1 dry cleaning machines, appurtenances, and other types of machinery designed to be used with  
2 chlorinated solvents to facilitate and promote the disposal of chlorinated solvents into the  
3 sewer system and/or which failed to adequately prevent and/or minimize the loss of  
4 chlorinated solvents; and/or (3) failed to recall and/or warn the users of the negligently  
5 designed chlorinated solvent equipment of the dangers of groundwater contamination as a  
6 result of chlorinated solvents disposal in the sewer system; and/or (4) further failed and refused  
7 to issue the appropriate warnings and/or recalls to the users of chlorinated solvents regarding  
8 the proper means of use and disposal of this toxic chemical, notwithstanding the fact that the  
9 respective defendant knew the identity of the purchaser of the chlorinated solvent equipment  
10 and/or chlorinated solvents.

11 35. In addition, the manufacturer defendants and distributor defendants, and each of  
12 them: (a) knew, or should have known, that dry cleaners, including the retailer defendants and  
13 other Modesto dry cleaners which contributed to the chlorinated solvent contamination, were  
14 foreseeable users of chlorinated solvents and were using the chlorinated solvents in a  
15 foreseeable manner; (b) knew, or should have known, that the chlorinated solvents were  
16 dangerous to the environment or health if deposited directly on the ground, drained or flushed  
17 into the sewer system, or by permeating unprotected concrete floors under dry cleaning  
18 equipment; (c) knew, or should have known, that Modesto dry cleaners, including the retailer  
19 defendants, foreseeably lacked knowledge of these dangers; (d) failed to warn the Modesto dry  
20 cleaners, including the retailer defendants, of the dangers and/or affirmatively instructed them  
21 to engage in such dangerous conduct; and (e) as a result, the Modesto dry cleaners, including  
22 the retailer defendants, failed to guard against the alleged contamination which resulted in  
23 harm to the plaintiffs.

24 36. In addition, notwithstanding the manufacturing defendants' and distributor  
25 defendants' knowledge of the severe environmental and health dangers and hazards posed by  
26 the use and disposal of chlorinated solvents on the ground and in sewers, these defendants: (1)  
27 instructed, directed, and recommended Modesto dry cleaners, including the retailer defendants,  
28 to dispose of chlorinated solvents onto the ground and into the sewers; (2) instructed, directed,

1 and recommended Modesto dry cleaners, including the retailer defendants, to maintain,  
2 operate, design, and construct the dry cleaning equipment to drain chlorinated solvents into the  
3 sewer systems and/or operate and maintain the dry cleaning equipment by means of physically  
4 disposing chlorinated solvent waste as part of the operation of the dry cleaning equipment into  
5 the sewers or soil which caused substantial and serious harm to the property of others,  
6 including the plaintiffs.

7 37. Chlorinated solvent products are fungible. The manufacturer and distributor  
8 defendants concluded that it was not enough to simply sell chlorinated solvents to dry cleaners  
9 in order to remain competitive. In order to compete for larger shares of the chlorinated solvent  
10 market, the manufacturer and distributor defendants, and each of them, would routinely and  
11 frequently advise, instruct, assist, recommend and/or participate in the operation, maintenance,  
12 inspection and/or testing of dry cleaners, including the retailer defendants and other Modesto  
13 dry cleaners, in order to promote the purchase of their chlorinated solvent products and in  
14 order to create brand loyalty. These activities included personal visits by manufacturer and  
15 distributor representatives to Modesto dry cleaners and written directions, instructions, and  
16 brochures on dry cleaning equipment maintenance and operations. Each of the manufacturer  
17 and distributor defendants routinely engaged in these same and similar practices. As part of  
18 these activities and practices, the manufacturer and distributor defendants, and each of them,  
19 instructed, directed and/or recommended to Modesto dry cleaners, including the retailer  
20 defendants, to dispose of chlorinated solvents on the ground or in the drain, including using the  
21 sewer system and dumping solvents on the ground as a method of disposal.

22 38. For example, in a 1966 memorandum on chlorinated solvent marketing, defendant  
23 E.I. DuPont De Nemours and Company stated that "PERK is PERK [sic]." DuPont concluded  
24 that PERC is a fungible product, and that the mere sale of PERC to customers is insufficient to  
25 gain a greater share of the competitive market because its salesmen and distributors would be  
26 perceived as mere "order takers." Therefore, in order to compete with other PERC  
27 manufacturers and distributors, its authorized representatives became personally involved in  
28 the dry cleaning business of its customers through regular and frequent personal calls to the

dry cleaners by providing written materials regarding the promotion, operation, and maintenance of dry cleaning equipment, and by supplying items of “genuine use” to dry cleaners, including “solvent resistant” gloves and bags. Each of the solvent manufacturers and distributors were engaged in these same or similar practices by routinely and frequently sending personal representatives to the premises of Modesto dry cleaners, including the dry cleaner defendants, and, among other things: (1) regularly observing the dry cleaning operations and practices, including disposal methods, of Modesto dry cleaners; (2) issuing brochures, newsletters and written and/or verbal directions and/or instructions for the operation, maintenance, and use of dry cleaning equipment and/or dry cleaning solvents; (3) testing perchloroethylene at the dry cleaners; (4) unloading and storing perchloroethylene at the Modesto dry cleaners; and (5) entering into exclusive distribution agreements between the manufacturer and distributor defendants which required the distributors to act as representatives of the respective manufacturers in doing these alleged acts.

39. Examples of these practices include, but are not limited to, the following:

(a) Dow advised, recommended and/or instructed dry cleaners to operate and maintain their dry cleaning equipment to discharge separator wastewater which contained chlorinated solvent contamination in such a manner to maximize a “free unimpeded water flow to the drain . . .”

(b) Defendant Dow instructed dry cleaners that “small amounts [of chlorinated solvents] may be transported to an area where it can be placed on the ground . . .”

(c) In a 1991 internal Vulcan and R.R. Street memorandum entitled “PERC Removal from Water Saturated With PERC Study,” R.R. Street/Vulcan concludes that significant amounts of PERC remain in wastewater generated by the dry cleaning process which was deposited into sewers.

(d) Defendant R.R. Street instructed dry cleaners that “[t]he residue from distillations of perchloroethylene may be poured on dry sand, earth, or ashes . . .”

(e) Defendant MBL, Inc. agreed to “disseminate to all customers” Dow publications regarding the handling of Dow perchloroethylene.



1 (f) Defendant R.R. Street provided "instructions for building a device for the purpose  
2 of detecting PERC escaping with the water from a water separator entitled "Are You Losing  
3 PERC Down the Drain?"

4 (g) PPG Industries instructed dry cleaners to dispose perchloroethylene "to a sanitary  
5 sewer or bury in chemical landfill."

6 (h) The manufacturer defendants were members of various trade groups including the  
7 Manufacturing Chemists Association, Inc., which prepared written instructions which the  
8 manufacturing defendants and distributor defendants supplied to Modesto dry cleaners which  
9 instruct that "small amounts [of chlorinated solvents] . . . can be placed on the ground."

10 (i) In addition, (a) the manufacturer defendants and distributor defendants of  
11 chlorinated solvents provided direct technical advice and service to the retailer defendants and  
12 Modesto dry cleaners relating to waste disposal in which the manufacturer defendants and  
13 distributor defendants advised the retailer defendants and Modesto dry cleaners to dispose of  
14 chlorinated solvents containing waste and separator water into the sewer or on the ground; (b)  
15 the retailer defendants and Modesto dry cleaners relied upon the advice of the manufacturer  
16 defendants and distributor defendants with regard to the operation of their facility and with  
17 regard to the disposal advice and service; (c) employees and agents of the manufacturer  
18 defendants and distributor defendants of chlorinated solvents had access to the facilities of the  
19 retailer defendants and Modesto dry cleaners; and (d) employees and agents of the  
20 manufacturer defendants and distributor defendants of chlorinated solvents performed tests on  
21 chlorinated solvents containing wastes, and that process resulted in the release of chlorinated  
22 solvents into the sewer and the environment causing the damage alleged herein.

23 (j) The manufacturer defendants set up, staffed, and directly controlled various trade  
24 associations and distributor defendants for the study, distribution, marketing, and sale of  
25 chlorinated solvents . Through these trade associations and the distributor defendants, the  
26 manufacturer defendants exercised complete and direct control over the study, distribution,  
27 marketing and sale of chlorinated solvents, and these trade associations and distributor  
28 defendants acted as agents of the manufacturer defendants in studying, distributing, marketing,



1 and selling of chlorinated solvents. Through these trade associations and distributor  
2 defendants, the manufacturer defendants knew of the toxicity and health and safety hazards  
3 associated with chlorinated solvents and gave instructions and advice regarding the disposal of  
4 chlorinated solvents that caused the release of chlorinated solvents into the environment. The  
5 manufacturer defendants organized and created these trade association and distributor  
6 defendants with the intent of shielding themselves from liability associated with their  
7 knowledge and control over chlorinated solvent products and the associated releases of  
8 chlorinated solvents.

9 40. The manufacturer, distributor, and chlorinated solvent equipment manufacturer  
10 defendants also (1) encouraged dry cleaners to use chlorinated solvents without adequate  
11 warnings, (2) agreed through trade associations to attack any regulation of chlorinated  
12 solvents, and (3) promoted the unsafe and improper disposal of chlorinated solvents in order to  
13 reduce the costs of its use and to increase the market share of chlorinated solvents over other  
14 competing dry cleaning substances.

### 15 **III. CONTAMINATION OF THE SEWER AND WATER SYSTEM**

16 41. As a direct result of the defendants' acts alleged in this Complaint, the sewer  
17 and water system, including groundwater and improvements, have been contaminated, and will  
18 continue to be contaminated, with chlorinated solvents which create a public health hazard  
19 unless abated. As a direct and proximate result thereof, plaintiffs must initiate a remedial  
20 program to assess, evaluate, investigate, monitor, remove, clean up, correct, and abate  
21 chlorinated solvent contamination and to restore plaintiff's property at significant expense, loss  
22 and damage. Costs incurred within the past three (3) years of the filing of the Complaint, or  
23 that are to be incurred in the future, include: loss of use of property, property damage,  
24 restoration costs incurred within the past three (3) years of the filing of the Complaint or that  
25 are to be incurred in the future, delay damages, property devaluation, interim and permanent  
26 remedial measures to control releases and potential releases of chlorinated solvents, cleanup  
27 costs, potential installation and maintenance of interceptor wells, and water treatment facilities,  
28 all in an amount in the many millions of dollars.

**FIRST CAUSE OF ACTION**

**(Strict Liability by Plaintiffs Modesto and Sewer District Against the Manufacturer Defendants, Distributor Defendants, and Chlorinated Solvent Equipment Manufacturers)**

42. Plaintiffs refer to paragraphs 1 through 41 above, and by this reference incorporates them herein as though set forth in full.

43. The manufacturer defendants, distributor defendants, and the chlorinated solvent equipment manufacturers, and each of them, designed, manufactured, formulated, packaged, distributed and/or sold products containing chlorinated solvents and/or equipment specifically designed to store, use, process, and dispose of chlorinated solvents.

44. The manufacturer defendants, distributor defendants, and chlorinated solvent equipment defendants, and each of them, represented, asserted, claimed and warranted that chlorinated solvents and/or chlorinated solvent equipment could be used in conformity with accompanying instructions and labels in a manner which would not cause injury or damage.

45. The manufacturer defendants, distributor defendants, and chlorinated solvent equipment defendants, and each of them, knew, or should have known, that the chlorinated solvents and/or chlorinated solvent equipment would be used without inspection for defects, and if any inspection were performed, that the defects would not be discovered with the exercise of reasonable diligence.

46. These defendants, and each of them, designed, manufactured, formulated, packaged, distributed, applied, disposed of and/or sold chlorinated solvents and/or the chlorinated solvent equipment. Defendants knew, or should have known, that exposure to chlorinated solvents would create risk of harms to human health and contaminate sewer, and water systems.

47. Chlorinated solvents are defective products because, among other things: (a) chlorinated solvents cause extensive groundwater contamination, even when used in their foreseeable and intended manner; (b) even at extremely low levels, chlorinated solvents render drinking water unfit for purveying to consumers and create a public health hazard whenever normal and necessary maintenance is performed on the sewer system, or otherwise adversely

1 impacts normal use of the sewer and water system; (c) chlorinated solvents pose a significant  
2 threat to public health; (d) defendants failed to provide adequate warnings of the known and  
3 foreseeable risks of chlorinated solvents; and (e) defendants failed to conduct adequate  
4 scientific studies to evaluate the environmental fate and potential human health effects of  
5 chlorinated solvents.

6 48. At all relevant times the:

7 (a) chlorinated solvent equipment defendants were aware of the use of  
8 chlorinated solvents in the dry cleaning process or as cleaning solvents;

9 (b) defendant chlorinated solvent equipment manufacturers were aware of the  
10 typical waste and disposal practices resulting from the intended use of their equipment.

11 Despite such knowledge, these defendants designed their equipment in such a manner that  
12 would result in spills, leaks, and/or discharge of chlorinated solvents during normal operations;

13 (c) defendants improperly designed their chlorinated solvent equipment by  
14 failing to provide appropriate mechanisms to prevent and/or catch releases or spills of  
15 chlorinated solvents and its by-products for such equipment;

16 (d) defendants failed to design proper mechanisms which would  
17 eliminate, prevent and/or treat contamination arising from the dry cleaning process such as  
18 contamination from separator wastewater, spent filter cartridges, muck, and still bottoms;

19 (e) defendant chlorinated solvent equipment manufacturers knew, or should  
20 have known, of appropriate equipment redesigns, retrofits, and/or modifications to protect  
21 against environmental contamination associated with the use of such equipment, and  
22 negligently and/or consciously disregarded this knowledge and failed to redesign, modify  
23 and/or retrofit the subject equipment. Safer alternative designs and cleaning processes were  
24 scientifically feasible and economical;

25 (f) defendant manufacturers and distributors represented to the public and  
26 regulatory authorities that the products they sold would degrade into harmless substances and  
27 would not cause contamination. At the time said representations were made, said defendants  
28

1 knew, or should have known, these representations were false, misleading, and/or that there  
2 was no reasonable basis to believe that they were true; and

3 (g) when chlorinated solvents were applied and disposed of pursuant to the  
4 defendant manufacturers' recommended application and disposal procedures set forth in  
5 product brochures, trade group publication funded by defendants, seminars, meetings,  
6 advertisements, oral statements and by other means, chlorinated solvents contaminated the  
7 sewer systems because of defendant manufacturers' failure to recommend adequate and proper  
8 safeguards to avoid or prevent contamination of the sewer system.

9 49. The chlorinated solvent equipment is a defective product because among other  
10 things: (1) the chlorinated solvent equipment causes extensive contamination, even when used  
11 in a foreseeable and intended manners; (2) at extremely low levels, chlorinated solvents  
12 contaminate sewer and water systems; (3) the use of chlorinated solvent equipment poses a  
13 significant threat to public health; (4) defendants failed to provide adequate warnings of the  
14 known and foreseeable risk of the use of chlorinated solvent equipment; and (5) defendants  
15 failed to conduct adequate scientific studies to evaluate the environmental fate and potential  
16 human health effects of the use of chlorinated solvent equipment.

17 50. The above-described defects in chlorinated solvents and chlorinated solvent  
18 equipment existed when the chlorinated solvents and chlorinated solvent equipment left the  
19 defendants' possession. The chlorinated solvents and chlorinated solvent equipment were used  
20 in a manner in which they were foreseeably intended to be used.

21 51. As a proximate and direct result of the defects alleged herein, the defendant  
22 manufacturers, distributors, and chlorinated solvent equipment manufacturers, and each of  
23 them, contaminated the sewer and water system, all to plaintiffs' damage in an amount within  
24 the jurisdiction of this court.

25 52. As a further direct and proximate result of the acts and omissions of the  
26 defendants alleged herein, plaintiffs have been damaged because it has been required to obtain,  
27 and will require, the services of engineers, hydrogeologists, contractors, and other  
28 professionals to investigate and remedy the contamination problem.

1           53. Plaintiffs are informed and believe and thereon allege that as a further direct  
2 and proximate result of the acts and omissions of the defendants alleged herein, plaintiffs will  
3 sustain substantially increased expenses and loss of the use of plaintiffs' property and sewer  
4 and water system, all to plaintiffs' damage in an amount within the jurisdiction of this court.  
5 Plaintiffs are also entitled to costs and prejudgment interest to the full extent permitted by law.

6           54. The manufacturer, distributor, and chlorinated solvent equipment defendants  
7 knew that it was substantially certain that their alleged acts and omissions described above  
8 would cause serious injury and property damage, including the contamination of the sewer and  
9 water system with chlorinated solvents. Defendants committed each of the above-described  
10 acts and omissions knowingly, willfully, and with oppression, fraud, and/or malice and with  
11 conscious disregard of the health and safety of others in at least the following respects:

12               (a) Defendants knew chlorinated solvents would contaminate the sewer  
13 system, groundwater, and public drinking water supplies. Nonetheless, defendants instructed  
14 chlorinated solvents users to dispose of chlorinated solvents into public sewers with conscious  
15 disregard of the public health and safety.

16               (b) Although defendants knew that chlorinated solvents were human  
17 carcinogens and that chlorinated solvent equipment habitually leaked chlorinated solvents into  
18 the environment, causing property damage, defendants individually and through trade  
19 associates sought to suppress unfavorable publicity regarding chlorinated solvents,  
20 manufactured and funded favorable scientific studies knowing they were biased and/or  
21 meritless, and suppressed information regarding the hazards of chlorinated solvents from  
22 regulators, all for the sake of profit.

23           55. This conduct is reprehensible, despicable, and was performed with the intent to  
24 induce reliance by a class of persons including their customers, the public, regulatory agencies  
25 and plaintiffs on false representations, and to promote sales of chlorinated solvents and  
26 chlorinated solvent equipment in conscious disregard of the known risks of injury to health and  
27 property. Defendants acted with willful and conscious disregard of the probable dangerous  
28

1 consequences of that conduct and its foreseeable impact upon plaintiffs. Therefore, plaintiffs  
2 request an award of punitive damages in an amount to punish defendants.

3 **SECOND CAUSE OF ACTION**

4 **(Negligence by Plaintiffs Modesto and Sewer District Against All Defendants)**

5 56. Plaintiffs reallege paragraphs 1 through 55, inclusive, of this complaint and  
6 incorporate them herein by reference.

7 57. Defendants had a duty to use due care in the design, manufacture, formulation,  
8 handling, control, disposal, sale and labeling, use, instructions for use and disposal of  
9 chlorinated solvents and/or chlorinated solvent equipment to prevent, and to the extent  
10 feasible, to eliminate contamination of the sewer and water system with chlorinated solvents in  
11 concentrations which may pose adverse health effects.

12 58. The defendants so negligently, carelessly, and recklessly designed,  
13 manufactured, formulated, handled, labeled, instructed, controlled and/or sold chlorinated  
14 solvents and/or chlorinated solvent equipment, and so negligently, carelessly and recklessly  
15 applied chlorinated solvents, disposed of chlorinated solvents, containers, and waste and/or  
16 negligently recommended application and disposal techniques for chlorinated solvents that  
17 they directly and proximately caused chlorinated solvents contamination of the sewer and  
18 water system, resulting in the compensatory damages alleged in this complaint, and a punitive  
19 damages award against defendants.

20 **THIRD CAUSE OF ACTION**

21 **(Negligence *Per Se* by Plaintiffs Modesto and Sewer District Against All Defendants)**

22 59. Plaintiffs reallege paragraphs 1 through 58, inclusive, of this complaint and  
23 incorporate them herein by reference.

24 60. Plaintiffs allege that the manufacturing defendants, chlorinated solvent  
25 equipment manufacturers, distributor defendants, and retailer defendants negligently,  
26 carelessly and recklessly designed, manufactured, formulated, handled, labeled, instructed,  
27 controlled and/or sold chlorinated solvents and/or chlorinated solvent equipment, and so  
28 negligently, carelessly and recklessly applied chlorinated solvents, disposed of chlorinated



1 solvents, containers, and waste and/or negligently recommended application and disposal  
2 techniques for chlorinated solvents that they directly and proximately caused contamination of  
3 the sewer and water system, and the municipal groundwater supply, in violation of California  
4 Water Code sections 13050(m), 13350(a), and 13387(a)(5), California Health and Safety Code  
5 sections 5411, 5411.5, and 117555, and California Fish and Game Code section 5650, the  
6 purpose of which are to set a standard of care or conduct to protect plaintiffs and all persons or  
7 property within its jurisdiction, as well as the environment, from the type of improper activities  
8 engaged in by defendants, and each of them. Therefore, such improper activities and  
9 violations constitute negligence *per se*. Plaintiffs' investigation and discovery are not yet  
10 complete, and therefore plaintiffs will seek leave of court to amend the complaint to allege  
11 additional violations or, in the alternative, give notice to defendants of any additional statutory  
12 violations when determined.

13 61. Defendants, and each of them, have failed to comply with state law as detailed  
14 above. As a direct and proximate result of the negligence *per se* of defendants, and each of  
15 them, plaintiffs has suffered damages, as alleged in this Complaint, including consequential,  
16 incidental and general damages to be proven at trial.

#### 17 **FOURTH CAUSE OF ACTION**

##### 18 **(Continuing Trespass by Plaintiffs Modesto and Sewer District Against All Defendants)**

19 62. Plaintiffs reallege paragraphs 1 through 61, inclusive, of this complaint and  
20 incorporate them herein by reference.

21 63. Plaintiffs are the owners and/or actual possessors of the sewer and water  
22 system.

23 64. The defendants so negligently, recklessly and/or intentionally failed to properly  
24 control, apply, use and/or dispose of chlorinated solvents that they directly and proximately  
25 caused chlorinated solvents to contaminate plaintiffs' possessory interests as follows:

26 (a) The defendants participated in the use and disposal of chlorinated solvents  
27 by intentionally, recklessly, and/or negligently controlling the use and disposal (and providing  
28 instructions for the disposal) of chlorinated solvents by dry cleaning stores; intentionally,



1 recklessly, and/or negligently instructing dry cleaners about the purportedly proper disposal  
2 methods for chlorinated solvents; and intentionally, recklessly, and/or negligently calibrating,  
3 designing and manufacturing customers' chlorinated solvent equipment in such a manner that  
4 chlorinated solvents were routinely disposed of into the project area on an ordinary basis. As a  
5 result of this activity, chlorinated solvents contaminated the sewer and water system.

6 (b) Defendant manufacturers, distributors, and chlorinated solvent equipment  
7 manufacturers intentionally, recklessly, and/or negligently instructed end-users, including  
8 retail dry cleaners, about the disposal of chlorinated solvents through informational brochures,  
9 instructional seminars, trade organization brochures funded, published, and distributed by  
10 defendants, product labels and other literature. Said defendants recommended that chlorinated  
11 solvents be dumped into the sewer system and/or dumped on the ground, notwithstanding that  
12 said defendants knew, or should have known, that chlorinated solvents would contaminate the  
13 water and soil and pose a risk to health. As a result, when chlorinated solvents were disposed  
14 of pursuant to the techniques recommended by said defendants, the chlorinated solvents  
15 contaminated the property of plaintiffs which is part of plaintiffs's sewer and water system. In  
16 addition, the chlorinated solvent equipment manufacturers designed their equipment to directly  
17 discharge chlorinated solvent waste into the sewer and/or instructed machine users to dispose  
18 of chlorinated solvent waste into the sewer.

19 (c) During this time, defendant manufacturers, distributors, and chlorinated  
20 solvent equipment manufacturers (1) knew and/or reasonably should have known that  
21 chlorinated solvents had caused environmental contamination, and (2) had not conducted  
22 adequate testing to determine the environmental fate and potential human health effects of  
23 chlorinated solvents. Even though said defendants had sufficient information to determine that  
24 chlorinated solvents posed a threat to the environment, they did not modify their chlorinated  
25 solvent disposal instructions or provide appropriate advice, instruction or information to their  
26 customers regarding proper disposal and use needed to avoid environmental contamination.

27 (d) Each of the defendants knew, or should have known, to avoid cleaning or  
28 rinsing empty chlorinated solvent containers and chlorinated solvent equipment residue and

1 muck into sewers and/or soil. These defendants knew, or should have known, that this practice  
2 resulted in contamination. Despite these facts, defendants continued these negligent practices.

3 (e) Defendants knew, or should have known, that chlorinated solvents were  
4 persistent, and that chlorinated solvents could contaminate soil and groundwater.

5 65. The chlorinated solvent manufacturer defendants, the distributor defendants, the  
6 chlorinated solvent equipment manufacturer defendants, and the retailer defendants were each  
7 a substantial factor in bringing about the resulting contamination of plaintiffs' possessory  
8 interests, and each of the defendants aided and abetted the continuing trespasses and are jointly  
9 responsible for the injuries and damages caused to plaintiffs as alleged in this Complaint and  
10 based on the following alleged conduct:

11 (a) The retailer defendants, and each of them, intentionally and carelessly  
12 disposed of PERC waste into plaintiffs's sewer system, or by dumping toxic PERC waste onto  
13 the ground, causing it to intrude upon, contaminate, and damage plaintiffs' possessory  
14 interests;

15 (b) The chlorinated solvent equipment manufacturers manufactured, designed,  
16 distributed, prepared and installed dry cleaning equipment and/or parts which defendants  
17 knew, or should have known, would directly discharge and leak toxic PERC into the sewer  
18 system and ground, and intrude upon, contaminate, and damage plaintiffs' possessory interests;

19 (c) The chlorinated solvent manufacturers, the distributor defendants, and the  
20 chlorinated solvent equipment manufacturer defendants intentionally caused the retailer  
21 defendants to dispose of the toxic chlorinated solvent waste by instructing, requesting and/or  
22 inducing the retailer defendants to dump chlorinated solvent waste onto the ground, or  
23 discharge chlorinated solvent waste directly into the sewer system, or pour chlorinated solvent  
24 waste down the drain, which caused the toxic chlorinated solvent waste to intrude upon  
25 plaintiffs' possessory interests and cause the alleged harm and damage; and

26 (d) At the time, the chlorinated solvent manufacturers, the distributor  
27 defendants, and the chlorinated equipment manufacturer defendants intentionally instructed,  
28 requested and/or induced the alleged tortious conduct by the retailer defendants, the

1 chlorinated solvent manufacturer defendants, the distributor defendants, and the chlorinated  
2 solvent equipment manufacturer defendants knew, or should have known, of the conditions  
3 under which the delicts were to be done, the toxicity of the chlorinated solvent waste, and the  
4 consequences of the acts. These defendants instructed, requested and/or induced the delicts  
5 and were a substantial factor in causing the resulting contamination of plaintiffs' possessory  
6 interests, and further aided and abetted the delicts, and are jointly liable with the retailer  
7 defendants with respect to the injuries and damages sustained by plaintiffs. Plaintiffs also seek  
8 punitive damages against the defendants.

9 66. The chlorinated solvent contamination of the sewer and water system has varied  
10 over time and can be reasonably abated. Plaintiffs have engaged, or will engage, in abatement  
11 programs.

#### 12 **FIFTH CAUSE OF ACTION**

##### 13 **(Private Nuisance by Plaintiffs Modesto and Sewer District Against All Defendants)**

14 67. Plaintiffs reallege paragraphs 1 through 66 of this complaint and incorporate  
15 them herein by reference.

16 68. The negligent, reckless, intentional and ultrahazardous activity of the  
17 defendants, and each of them, has resulted in the contamination of plaintiffs' sewer and water  
18 system and constitutes a continuing nuisance within the meaning of Civil Code section 3479.  
19 The chlorinated solvent contamination of the sewer and water system, and the municipal  
20 groundwater supply, has varied over time and can be reasonably abated. Plaintiffs have  
21 engaged, and will engage, in abatement programs.

22 69. Since plaintiffs are the property owner adversely affected by the nuisance, it is a  
23 private nuisance within the meaning of Civil Code section 3481.

24 70. As a direct and proximate result of the nuisance, plaintiffs have been damaged  
25 and are entitled to the compensatory damages alleged herein, and seek punitive damages  
26 against the defendants.<sup>1</sup>

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27  
28 <sup>1</sup>The court sustained a demurrer without leave to amend regarding plaintiffs's prior cause  
of action for declaratory relief. Accordingly, the complaint is being amended to reflect the court's

**SIXTH CAUSE OF ACTION**

**(Private Nuisance *Per Se* by Plaintiffs Modesto and Sewer District  
Against All Defendants)**

71. Plaintiffs reallege paragraphs 1 through 70 of this complaint and incorporate them herein by reference.

72. The negligent, reckless, intentional and ultrahazardous activity of defendants, and each of them, resulted in the contamination of plaintiffs' sewer and water system, and the municipal groundwater supply underlying the sewer and water system, in violation of California Water Code sections 13050(m), 13350, and 13387, Health and Safety Code sections 5411, 5411.5, and 117555, and California Fish and Game Code section 5650, as well as various other state and federal statutes, rules and regulations referenced in the aforesaid Water Code, the purpose of which are to set a standard of care or conduct to protect plaintiffs and all persons and property within their jurisdiction, as well as the environment, from the type of improper activities engaged in by defendants, and each of them, as alleged in this complaint. Therefore, such improper activities and violations constitute a private nuisance *per se*.

73. Defendants, and each of them, have failed to comply with the state law as detailed above.

74. Plaintiffs have sustained special injury as a result of these nuisances, including incurring investigation costs. As a further direct and proximate result of the private nuisance *per se* created by defendants, and each of them, plaintiffs have suffered damages as alleged in this complaint, including other consequential, incident, and general damages to be proven at trial.

**SEVENTH CAUSE OF ACTION**

**(Public Nuisance by All Plaintiffs Against All Defendants)**

75. Plaintiffs reallege paragraphs 1 through 74 of this complaint and incorporate them herein by reference.

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ruling, and not because plaintiffs are waiving or dismissing the declaratory relief cause of action. This statement is made in order to preserve the issue on appeal

1           76.     The negligent, reckless, intentional and ultrahazardous activity of the  
2 defendants, and each of them, as described in this complaint, gives rise to a public nuisance  
3 within the meaning of California Civil Code sections 3479 and 3480, which affects not only  
4 the plaintiffs, but also the entire community of the City of Modesto, and/or the comfort and  
5 convenience of a considerable number of residents and visitors to the City of Modesto,  
6 although the extent of the damages inflicted upon individuals may be unequal.

7           77.     Because the contamination created by the negligent, reckless, intentional and  
8 ultrahazardous activity of defendants, and each of them, has resulted in contamination that  
9 continues, and threatens to continue, to spread to the sewer and water system, adjacent  
10 properties, and into the municipal groundwater supply within the jurisdiction of the plaintiffs  
11 and for which plaintiffs possess a legally cognizable property interest on behalf of its residents,  
12 it is of great public concern. As a result, plaintiffs have incurred and will continue to incur  
13 substantial and necessary response costs, including investigatory expenses, attorneys' fees,  
14 consulting fees, oversight costs, interest and other response costs. For the aforesaid reasons,  
15 plaintiffs have and will suffer injuries different in kind from those suffered by the general  
16 public.

17           78.     The negligent, reckless, intentional and ultrahazardous activity of the  
18 defendants, and each of them, which has resulted in contamination, and threatens to continue  
19 to contaminate, the plaintiffs' sewer and water system and the public's right to use and enjoy its  
20 groundwater supply, is also a public nuisance as defined by Title 4, Chapter 12,  
21 Section 4-12.300, of the Modesto Municipal Code, for which plaintiffs seek remedies in  
22 accordance with Title 4, Chapter 12, Article 2.

23           79.     Plaintiffs City of Modesto and City of Modesto Sewer District No. 1 allege that  
24 as a proximate result of the negligent, reckless, intentional and ultrahazardous activity of the  
25 defendants, and each of them, which has resulted in the contamination of plaintiffs' sewer and  
26 water system, groundwater and constitutes a public nuisance, plaintiffs have and will incur  
27 substantial expense, as previously described herein, to abate the public nuisance.  
28

1           80.     Plaintiffs assert that litigation against defendants, and each of them, is necessary  
2 because it raises issues of public importance and policy which are in need of vindication by  
3 litigation, presents the necessity of enforcement of said issues and rights resulting from special  
4 burdens which fall on plaintiffs, and will benefit the health and safety of the community.

5           81.     Plaintiffs City of Modesto and City of Modesto Sewer District No. 1 are  
6 entitled to recover from defendants, and each of them, all costs presently incurred or which  
7 may be incurred in investigating and verifying the contamination at the sites, for past and  
8 future costs to remediate the sites and threat contaminated water. Plaintiffs are also entitled to  
9 all available remedies as described in Title 4, Chapter 12, Article 2, of the Modesto Municipal  
10 Code, for attorneys' fees and interest, and for other response costs and expenses. The exact  
11 amount owing to plaintiffs will be determined at trial according to proof. Plaintiffs City of  
12 Modesto and City of Modesto Sewer District No. 1 also request that the public nuisance  
13 described in this complaint be enjoined and abated. Plaintiff The People seeks the abatement  
14 and injunction of the nuisance and all other legally available damages and costs, the value of  
15 which is within the jurisdiction of this court.

16                           **EIGHTH CAUSE OF ACTION**

17                   **(Public Nuisance *Per Se* by All Plaintiffs Against All Defendants)**

18           82.     Plaintiffs reallege paragraphs 1 through 81 of this complaint and incorporate  
19 them herein by reference.

20           83.     Plaintiffs allege that the negligent, reckless, intentional and ultrahazardous  
21 activity of defendants, and each of them, which has resulted in contamination of plaintiffs's  
22 project area, as well as the municipal groundwater supply underlying the sewer and water  
23 system, and constitutes a public nuisance, is a violation of California Water Code sections  
24 13050(m), 13350, and 13387, California Health and Safety Code sections 5411, 5411.5, and  
25 117555, and California Fish and Game Code section 5650, the purpose of which are to set a  
26 standard of care or conduct to protect plaintiffs and all persons or property within its  
27 jurisdiction, as well as the environment, from the type of improper activities engaged in by  
28



1 defendants, and each of them. Therefore, such improper activities and violations constitute a  
2 public nuisance *per se*.

3 84. Defendants, and each of them, have failed to comply with the state law as  
4 detailed above. Plaintiffs City of Modesto and City of Modesto Sewer District No. 1 have  
5 sustained special injury as a result of this public nuisance, including investigative costs. As a  
6 further direct and proximate result of the public nuisance *per se* created by defendants, and  
7 each of them, plaintiffs City of Modesto and City of Modesto Sewer District No. 1 have  
8 suffered damages as previously described herein, including other consequential, incidental and  
9 general damages to be proven at trial. Plaintiff The People seeks the abatement of the nuisance  
10 and all other legally available costs and damages.

11 85. Section 731 of the California Code of Civil Procedure authorizes the respective  
12 plaintiffs to bring a civil action to abate or enjoin a public nuisance. The conduct of  
13 defendants, and each of them, has created a public nuisance as described in this complaint.

14 86. Plaintiffs and each of them, request that the public nuisance, as described in this  
15 complaint, be enjoined or abated.

#### 16 NINTH CAUSE OF ACTION

#### 17 **(Response Costs Under California Superfund Act, Health and Safety Code §§ 25300 18 et seq., by Plaintiffs Modesto and Sewer District Against All Defendants)**

19 87. Plaintiffs reallege paragraphs 1 through 86 of this complaint and incorporate  
20 them herein by reference.

21 88. Section 25323.5(a) of the California Health and Safety Code defines a person  
22 who is liable under the Carpenter-Presley-Tanner Hazardous Substance Account Act  
23 ("California Superfund"). Defendants, and each of them, are "responsible parties" under  
24 California Superfund and liable to plaintiffs for response costs and other damages.

25 89. All of the contaminants that defendants disposed of and released into the  
26 plaintiffs' sewer system and the municipal groundwater supply constitute substances  
27 specifically listed and designated as "hazardous substances" within the meaning of California  
28 Health and Safety Code section 25316.



1           90.     The improvements within plaintiffs' sewer system and the municipal  
2 groundwater supply systems and constitute a "facility" under California Superfund.

3           91.     As a proximate cause of defendants' release of hazardous substances into the  
4 environment, including plaintiffs' sewer system, and the municipal groundwater supply,  
5 plaintiffs have had to incur necessary response costs, including attorneys' fees and expert  
6 witness fees, for which defendants are strictly liable pursuant to California Health and Safety  
7 Code section 25363. All of the costs plaintiffs have incurred to remove and/or remediate the  
8 contamination at the premises have been in accordance with Chapter 6.8 of the Hazardous  
9 Substances Account Act. Notice of commencement of this action has been given to the  
10 Director of Toxic Substances Control pursuant to California Health and Safety Code  
11 section 25363(e).

12           92.     Plaintiffs seek contribution and/or indemnity for all response costs under  
13 California Health and Safety Code section 25363, which provides that any person who has  
14 incurred removal or remedial action costs may seek contribution or indemnity from any  
15 responsible party.

16                               **TENTH CAUSE OF ACTION**

17                   **(Declaratory Relief Under California Superfund Act, Health and Safety Code**  
18                   **Section 25300 et seq., by Plaintiffs Modesto and Sewer District Against All Defendants)**

19           93.     Plaintiffs reallege paragraphs 1 through 92 of this complaint and incorporate  
20 them herein by reference.

21           94.     Because the extent and magnitude of the contamination at the premises is not  
22 fully known at this time, and the investigatory and remedial works are ongoing, plaintiffs will  
23 incur necessary response costs, including but not limited to investigatory, remedial and  
24 removal expenses, attorneys' fees and interest in the future.

25           95.     Pursuant to California Health and Safety Code section 25363, plaintiffs are  
26 entitled to a declaratory judgment establishing the liability of defendants, and each of them, for  
27 such response costs for the purpose of this and any subsequent action or actions to recover  
28 further response costs.

**ELEVENTH CAUSE OF ACTION**

**(Ultrahazardous Activity by Plaintiffs Modesto and Sewer District  
Against the Retailer Defendants)**

96. Plaintiffs reallege paragraphs 1 through 95 above, and incorporate them herein by reference.

97. The retailer defendants, and each of them, engaged in the ultrahazardous activity of using and then disposing of chlorinated solvents into the sewer system and/or on the soil, or into the groundwater, notwithstanding the fact that chlorinated solvents are a serious and substantial risk of harm to health, including cancer, liver disease and death. Chlorinated solvents further constitute a serious and substantial toxic contamination which renders water unsuitable for drinking and contaminates sewers and soil. The use and disposal of chlorinated solvents is unsafe and harmful, even though the utmost care is utilized in the use and disposal of chlorinated solvents.

98. As a direct result of this ultrahazardous activity, the sewer systems, soil and groundwater have been contaminated, resulting in the alleged damages sustained by plaintiffs.

**TWELFTH CAUSE OF ACTION**

**(Utility Tampering [Civil Code § 1882.1] by Plaintiffs Modesto and Sewer District  
Against All Defendants)**

99. Plaintiffs reallege paragraphs 1 through 98 above, and incorporate them herein by reference.

100. Plaintiffs are a utility as defined at California Civil Code section 1882(f).

101. The conduct and activities of defendants, and each of them, was a tampering of property owned, operated, controlled and/or used by the plaintiffs to provide water and sewer services. Defendants, and each of them, assisted, aided, and abetted in introducing contaminants into the drinking water supplies of plaintiffs.

102. As a direct and proximate result of this conduct and activity, plaintiffs have been damaged and are entitled to recover damages from defendants, and each of them, as authorized by California Civil Code section 1882.1.

103. Plaintiffs are entitled to recover three times the amount of actual damages, plus costs of suit and attorneys' fees, as authorized by California Civil Code section 1882.2.

**WHEREFORE**, plaintiffs request judgment against defendants, and each of them, for:

1. Compensatory damages, including treble damages, according to proof;

2. Punitive damages against the chlorinated solvent manufacturer defendants, distributor defendants and chlorinated solvent equipment manufacturer defendants, in an amount sufficient to punish and to said deter defendants from ever committing the same or similar acts;

3. All available remedies as described in Title 4, Chapter 12, Article 2, of the Modesto Municipal Code;

4. For declaratory relief and orders as to defendants' liability to plaintiffs for the costs and expenses as set forth in the tenth cause of action herein;

5. For relief and order of abatement or enjoinder of nuisance as set forth in the seventh and eighth causes of action herein;

6. For three times the amount of actual damages, plus costs of suit and attorneys' fees as set forth in the twelfth cause of action herein;

7. For litigation costs, including attorneys' fees;

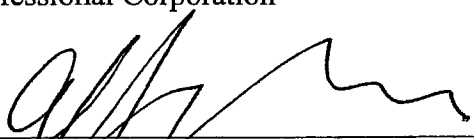
8. For costs of suit incurred herein, and prejudgment interest to the full extent permitted by law; and

9. For such other and further relief as the court may deem just and proper.

Dated: January 4, 2002

**MILLER, SHER & SAWYER**  
A Professional Corporation

By:

  
A. CURTIS SAWYER, JR.  
Attorneys for Plaintiffs  
City of Modesto; Modesto Sewer District  
No. 1; and the People of the State of California  
Ex Rel the City Attorney of the City of Modesto

**PROOF OF SERVICE BY MAIL**

I, the undersigned, declare that I am, and was at the time of service of the paper(s) herein referred to, over the age of 18 years and not a party to this action. My business address is 100 Howe Avenue, Suite S-120, Sacramento, California 95825, which is located in the county in which this mailing occurred. I am familiar with my office's business practice for collection and processing of correspondence for mailing with the United States Postal Service, and under such practice the correspondence would be deposited with the United States Postal Service, postage pre-paid, the same day in the ordinary course of business.

On January 4, 2002, I served **THIRD AMENDED COMPLAINT FOR DAMAGES AND OTHER RELIEF (SOLVENT CONTAMINATION): (1) STRICT LIABILITY; (2) NEGLIGENCE; (3) NEGLIGENCE *PER SE*; (4) CONTINUING TRESPASS; (5) PRIVATE NUISANCE; (6) PRIVATE NUISANCE *PER SE*; (7) PUBLIC NUISANCE; (8) PUBLIC NUISANCE *PER SE*; (9) RESPONSE COSTS UNDER CALIFORNIA SUPERFUND ACT; (10) DECLARATORY RELIEF UNDER CALIFORNIA SUPERFUND ACT; (11) ULTRAHAZARDOUS ACTIVITY; AND (12) UTILITY TAMPERING** on the following persons or parties by placing a true copy thereof in a sealed envelope, showing the addresses set forth below, for collection and deposit in the United States Postal Service on that date following ordinary business practices:

See Attached List

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on January 4, 2002, at Sacramento, California.

  
LORI FERGUSON